SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No. 457

C. J. ADAMS, ALIAS CHARLIE ADAMS, PETITIONER,

vs.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

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[fol. 1]

IN DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ALABAMA

Style of Cause

UNITED STATES OF AMERICA, Plaintiff,

VERSUS

WALTER TOWNS, CARRIE LEE TOWNS and C. J. ADAMS alias CHARLIE ADAMS, Defendants.

Criminal No. 11470

Indictment for Violation of Sec. 311 of Title 50 of the United States Code. Aiding and abetting failure to register with Local Board and Conspiracy

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[fol. 2] IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF ALABAMA
NORTHERN DIVISION

May Term, 1945

No. 11470

INDICTMENT—Filed June 27, 1945

Vio: Section 311, Title 50, USCA

Count One

The Grand Jurors of the United States, duly selected, empaneled and sworn, in and for the Southern District of Alabama, upon their oaths, do find, present and charge:

1. That heretofore and on, to wit, the 10th day of June, 1944, one Samuel B. Towns, alias Sammy B. Towns, alias Samuel Towns, alias Sammy Towns, alias Isaac Town, alias Isham Town, alias Bit Towns, alias Buddy Towns, who is hereinafter called Samuel B. Towns, was a person charged, as provided in the Selective Training and Service Act of 1940, as amended, with the duty of carrying out a provision of said Act and the rules and regulations made and directions given thereunder, that is to say, to wit: The said Samuel B. Towns was then and there a male citizen of the United States between the

ages of 18 and 65 years, who had not been registered under the Selective Training and Service Act of 1940, as amended, prior to the said 10th day of June, 1944, and was on said 10th day of June, 1944, at Selma, in Dallas County, Alabama, within the area over which Selective Service Local Board No. 1, Dallas County, Alabama, had jurisdiction, and was charged with the [fol. 3] duty of presenting himself for and submitting to registration at said Local Board No. 1, Dallas County, Alabama, on said 10th day of June, 1944;

2. That heretofore and on, to wit, the 10th day of June, 1944, at Selma, in Dallas County, Alabama, in the Northern Division of the Southern District of Alabama, and within the jurisdiction of this court, Walter Towns, Carrie Lee Towns, and C. J. Adams, alias Charlie Adams, whose respective names are to the Grand Jurors otherwise unknown, and who are the defendants herein, did unlawfully and knowingly aid, counsel and abet the said Samuel B. Towns to unlawfully and knowingly fail and neglect to present himself for and submit to registration at said Local Board No. 1, Dallas County, Alabama; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

Count Two

And the Grand Jurors aforesaid, upon their oaths as aforesaid, do further find, present and charge:

1. That heretofore and on, to wit, the 19th day of September, 1944, one Samuel B. Towns, Alias Sammy B. Towns, alias Samuel Towns, alias Sammy Towns, alias Isaac Town, alias Isham Town, alias Bit Towns, alias Buddy Towns, who is hereinafter called Samuel B. Towns, was a person charged, as provided in the Selective Training and Service Act of 1940, as amended, with the duty of carrying out a provision of said Act and the rules and regulations made and directions given thereunder, that is to say, to wit: The said Samuel B. Towns was then and there a male citizen of the United States between the ages of [fol. 4] 18 and 65 years, who had not been registered under the Selective Training and Service Act of 1940, as amended, prior to the said 19th day of September, 1944,

and was on said 19th day of September, 1944, at or near Pleasant Hill, in Dallas County, Alabama, within the area over which Selective Service Local Board No. 2, Dallas County, Alabama, had jurisdiction, and was charged with the duty of presenting himself for and submitting to registration at said Local Board No. 2, Dallas County, Alabama, on said 19th day of September, 1944;

2. That heretofore and on, to wit, the 19th day of September, 1944, at or near Pleasant Hill, in Dallas County, Alabama, in the Northern Division of the Southern District of Alabama, and within the jurisdiction of this Court, Walter Towns, Carrie Lee Towns, and C. J. Adams, alias Charlie Adams, whose respective names are to the Grand Jurors otherwise unknown, and who are the defendants herein, did unlawfully and knowingly aid, counsel and abet the said Samuel B. Towns to unlawfully and knowingly fail and neglect to present himself for and submit to registration at said Local Board No. 2, Dallas County, Alabama; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

Count Three

And the Grand Jurors aforesaid, upon their oaths as aforesaid, do further find, present and charge:

1. That heretofore and on, to wit, the 10th day of June, 1944, one Samuel C. Towns, alias Sammy C. Towns, alias Samuel Towns, alias Sammy Towns, alias [fol. 5] Isaac Town, alias Isham Town, alias Bit Towns, alias Buddy Towns, who is hereinafter called Samuel C. Towns, was a person charged, as provided in the Selective Training and Service Act of 1940, as amended, with the duty of carrying out a provision of said Act and the rules and regulations made and directions given thereunder, that is to say, to wit: The said Samuel C. Towns was then and there a male citizen of the United States between the ages of 18 and 65 years, who had not been registered under the Selective Training and Service Act of 1940, as amended, prior to the said 10th day of June, 1944, and was on said 10th day of June, 1944, at Selma, in Dallas County, Alabama, within the area over which Selective Service Local Board No. 1, Dallas County, Alabama, had

jurisdiction, and was charged with the duty of presenting himself for and submitting to registration at said Local Board No. 1, Dallas County, Alabama, on said 10th day of June, 1944;

2. That heretofore and on, to wit, the 10th day of June, 1944, at Selma, in Dallas County, Alabama, in the Northern Division of the Southern District of Alabama, and within the jurisdiction of this court, Walter Towns, Carrie Lee Towns and C. J. Adams, alias Charlie Adams, whose respective names are to the Grand Jurors otherwise unknown, and who are the defendants herein, did unlawfully and knowingly aid, counsel and abet the said Samuel C. Towns to unlawfully and knowingly fail and neglect to present himself for and submit to registration at said Local Board No. 1, Dallas County, Alabama; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

[fol. 6] Count Four

And the Grand Jurors aforesaid, upon their oaths as aforesaid, do further find, present and charge:

1. That heretofore and on, to wit, the 19th day of September, 1944, one Samuel C. Towns, alias Sammy C. Towns, alias Samuel Towns, alias Sammy Towns, alias Isaac Town, alias Isham Town, alias Bit Towns, alias Buddy Towns, who is hereinafter called Samuel C. Towns, was a person charged, as provided in the Selective Training and Service Act of 1940, as amended, with the duty of carrying out a provision of said Act and the rules and regulations made and directions given thereunder, that is to say, to wit: The said Samuel C. Towns was then and there a male citizen of the United States between the ages of 18 and 65 years, who had not been registered under the Selective Training and Service Act of 1940, as amended, prior to the said 19th day of September, 1944, and was on said 19th day of September, 1944, at or near Pleasant Hill, in Dallas County, Alabama, within the area over which Selective Service Local Board No. 2, Dallas County, Alabama, had jurisdiction, and was charged with the duty of presenting himself for and submitting to registration at said Local Board No. 2, Dallas County, Alabama, on said 19th day of September, 1944;

2. That heretofore and on, to wit, the 19th day of September, 1944, at or near Pleasant Hill, in Dallas County, Alabama, in the Northern Division of the Southern District of Alabama, and within the jurisdiction of this Court, Walter Towns, Carrie Lee Towns, and C. J. Adams, alias Charlie Adams, whose respective names are [fol. 7] to the Grand Jurors otherwise unknown, and who are the defendants herein, did unlawfully and knowingly aid, counsel and abet the said Samuel C. Towns to unlawfully and knowingly fail and neglect to present himself for and submit to registration at said Local Board No. 2, Dallas County, Alabama; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

Count Five

And the Grand Jurors aforesaid, upon their oaths as aforesaid, do further find, present and charge:

1. That heretofore and on, to wit, the 10th day of June, 1944, one John Derry Towns, alias John Towns, alias J. D. Towns, who is hereinafter called John Towns, was a person charged, as provided in the Selective Training and Service Act of 1940, as amended, with the duty of carrying out a provision of said Act and the rules and regulations made and directions given thereunder, that is to say, to wit: The said John Towns was then and there a male citizen of the United States between the ages of 18 and 65 years, who had not been registered under the Selective Training and Service Act of 1940, as amended, prior to the said 10th day of June, 1944, and was on said 10th day of June, 1944, at Selma, in Dallas County, Alabama, within the area over which Selective Service Local Board No. 1, Dallas County, Alabama, had jurisdiction, and was charged with the duty of presenting himself for and submitting to registration at said Local Board No. 1, Dallas County, Alabama, on said 10th day of June, 1944;

2. That heretofore and on, to wit, the 10th day of June, 1944, at Selma, in Dallas County, Alabama, in the Northern Division of the Southern District of Alabama, [fol. 8] and within the jurisdiction of this Court, Walter Towns, Carrie Lee Towns, and C. J. Adams, alias Charlie

Adams, whose respective names are to the Grand Jurors otherwise unknown, and who are the defendants herein, did unlawfully and knowingly aid, counsel and abet the said John Towns to unlawfully and knowingly fail and neglect to present himself for and submit to registration at said Local Board No. 1, Dallas County, Alabama; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

Count Six

And the Grand Jurors aforesaid, upon their oaths as aforesaid, do further find, present and charge:

1. That heretofore and on, to wit, the 19th day of September, 1944, one John Derry Towns, alias John Towns, alias J. D. Towns, who is hereinafter called John Towns, was a person charged, as provided in the Selective Training and Service Act of 1940, as amended, with the duty of carrying out a provision of said Act and the rules and regulations made and directions given thereunder, that is to say, to wit: The said John Towns was then and there a male citizen of the United States between the ages of 18 and 65 years, who had not been registered under the Selective Training and Service Act of 1940, as amended, prior to the 19th day of September, 1944, and was on the said 19th day of September, 1944, at or near Pleasant Hill, in Dallas County, Alabama, within the area over which Selective Service Local Board No. 2, Dallas County, Alabama, had jurisdiction, and was charged with the duty of presenting himself for and submitting to registration at said Local Board No. 2, Dallas County, Alabama, on said 19th day of September, 1944;

[fol. 9] 2. That heretofore and on, to wit, the 19th day of September, 1944, at or near Pleasant Hill, in Dallas County, Alabama, in the Northern Division of the Southern District of Alabama, and within the jurisdiction of this Court, Walter Towns, Carrie Lee Towns, and C. J. Adams, alias Charlie Adams, whose respective names are to the Grand Jurors otherwise unknown, and who are the defendants herein, did unlawfully and knowingly aid, counsel and abet the said John Towns to unlawfully and knowingly fail and neglect to present himself for and

submit to registration at said Local Board No. 2, Dallas County, Alabama; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

Count Seven

And the Grand Jurors aforesaid, upon their oaths as aforesaid, do further find, present and charge:

1. That on the date hereinafter mentioned as the date of the beginning of the conspiracy hereinafter described Samuel B. Towns, alias Sammy B. Towns, alias Samuel Towns, alias Sammy Towns, alias Isaac Town, alias Isham Town, alias Bit Towns, alias Buddy Towns, hereinafter referred to as Samuel B. Towns, and Samuel C. Towns, alias Sammy C. Towns, alias Samuel Towns, alias Sammy Towns, alias Isaac Town, alias Isham Town, alias Bit Towns, alias Buddy Towns, hereinafter referred to as Samuel C. Towns, and John Derry Towns, alias John Towns, alias J. D. Towns, hereinafter referred to as John Towns, were, respectively, male citizens of the United States between the ages of 18 and 45 years, who [fol. 10] had not been theretofore registered under the Selective Training and Service Act of 1940, as amended (hereinafter referred to as the Act), and the rules and regulations made and directions given thereunder; that each of them was, under the provisions of said Act and the rules and regulations made and directions given thereunder, on said date and at all times thereafter mentioned in this indictment, under the continuous duty of immediately presenting himself for and submitting to registration to the Local Board in the area where he happened to be, and that beginning on, to wit, November 13, 1942, and at all times thereafter mentioned in this indictment, each of them was liable for training and service in the land or naval forces of the United States under said Act;

2. That during the period of time between, to wit, the 1st day of January, 1942, and to wit, the 10th day of February, 1945, at or near Pleasant Hill, in Dallas County, Alabama, in the Northern Division of the Southern District of Alabama, and within the jurisdiction of this Court, Walter Towns, Carrie Lee Towns, and C. J. Adams, alias Charlie Adams, whose respective names are to the Grand

Jurors otherwise unknown, and who are the defendants herein, aware of all of this, did unlawfully, knowingly, willfully and feloniously conspire together and with said Samuel B. Towns, Samuel C. Towns, and John Towns, and others unknown, to commit offenses against the United States by violating Section 11 of said Act, to wit,

(a) to cause the said Samuel B. Towns to unlawfully and knowingly evade registration under said Act by falsely pretending that he, the said Samuel B. Towns, was born on June 9, 1930;

[fol. 11] (b) to cause the said Samuel B. Towns to knowingly and unlawfully evade service in the land or naval forces by falsely pretending that he, the said Samuel B. Towns, was born on June 9, 1930;

(c) to unlawfully and knowingly make a false statement as to the liability or non-liability of Samuel B. Towns for service under said Act, or the rules and regulations or directions made pursuant thereto, to wit, a false statement to Local Board No. 2, Dallas County, Alabama, in substance, that said Samuel B. Towns was born on June 9, 1930;

(d) to cause the said Samuel C. Towns to unlawfully and knowingly evade registration under said Act by falsely pretending that he, the said Samuel C. Towns, was born on June 9, 1930;

(e) to cause the said Samuel C. Towns to knowingly and unlawfully evade service in the land or naval forces by falsely pretending that he, the said Samuel C. Towns, was born on June 9, 1930;

(f) To unlawfully and knowingly make a false statement as to the liability or non-liability of Samuel C. Towns for service under said Act, or the rules and regulations and directions made pursuant thereto, to wit, a false statement to Local Board No. 2, Dallas County, Alabama, in substance, that the said Samuel C. Towns was born on June 9, 1930;

(g) to cause the said John Towns to unlawfully and knowingly evade registration under said Act by falsely pretending that he, the said John Towns, was born on October 9, 1928;

[fol. 12] (h) to cause the said John Towns to knowingly and unlawfully evade service in the land or

naval forces by falsely pretending that he, the said John Towns, was born on October 9, 1928;

(i) to unlawfully and knowingly make a false statement as to the liability or non-liability of John Towns for service under said Act, or the rules and regulations or directions made pursuant thereto, to wit, a false statement to Local Board No. 2, Dallas County, Alabama, in substance, that said John Towns was born on October 9, 1928.

3. That each of the said defendants and the said Samuel B. Towns, Samuel C. Towns and John Towns, and said others unknown, came into the said unlawful conspiracy with the object and purpose of aiding, assisting and participating therein;

4. That the exact date of the beginning of said conspiracy is to the Grand Jurors unknown, but that all of the co-conspirators had entered into said conspiracy before the 28th day of March, 1944, and that each of the conspirators who are hereinafter averred to have committed an overt act entered into said unlawful conspiracy before the date of the overt act hereinafter averred to have been committed by him or her;

5. That the said defendants and the said Samuel B. Towns, Samuel C. Towns and John Towns, at the several times and places hereinafter mentioned in connection with their names, did do certain acts subsequent to the formation of, in pursuance of, during the existence of, in the execution of, and to effect the objects of the said unlawful, knowing and felonious conspiracy heretofore herein described, to wit:

[fol. 13] (1) That on or about the 25th day of March, 1944, at or near Selma, in Dallas County, Alabama, in the Northern Division of the Southern District of Alabama, and within the jurisdiction of this Court, Samuel B. Towns signed an affidavit that the date of his birth was June 9, 1930, which affidavit was a part of a delayed certificate of birth which was thereafter and on the 28th day of March, 1944, filed with the Bureau of Vital Statistics, Alabama State Department of Health;

(2) That on or about the 25th day of March, 1944, at or near Selma, in Dallas County, Alabama, in the North-

ern Division of the Southern District of Alabama, and within the jurisdiction of this Court, Samuel C. Towns signed an affidavit that the date of his birth was June 9, 1930, which affidavit was a part of a delayed certificate of birth which was thereafter and on the 28th day of March, 1944, filed with the Bureau of Vital Statistics, Alabama State Department of Health;

(3) That on or about the 25th day of March, 1944, at or near Selma, in Dallas County, Alabama, in the Northern Division of the Southern District of Alabama, and within the jurisdiction of this Court, John Towns signed an affidavit that the date of his birth was October 9, 1928, which affidavit was a part of a delayed certificate of birth which was thereafter and on the 28th day of March, 1944, filed with the Bureau of Vital Statistics, Alabama State Department of Health;

(4) That on or about the 23rd day of March, 1944, at or near Selma, in Dallas County, Alabama, in the Northern Division of the Southern District of Alabama, and within the jurisdiction of this Court, Carrie Lee Towns signed an affidavit that the date of the birth of John Towns was October 9, 1928, which affidavit was a part of [fol. 14] a delayed certificate of birth which was thereafter and on the 28th day of March, 1944, filed with the Bureau of Vital Statistics, Alabama State Department of Health;

(5) That on or about the 24th day of March, 1944, at or near Selma, in Dallas County, Alabama, in the Northern Division of the Southern District of Alabama, and within the jurisdiction of this Court, Carrie Lee Towns signed an affidavit that the date of the birth of Samuel B. Towns was June 9, 1930, and also signed an affidavit that the date of the birth of Samuel C. Towns was June 9, 1930, each of which affidavits was a part of respective delayed certificates of birth, which were thereafter and on the 28th day of March, 1944, filed with the Bureau of Vital Statistics, Alabama State Department of Health;

(6) That on or about the 24th day of March, 1944, at or near Selma, Dallas County, Alabama, in the Northern Division of the Southern District of Alabama, and within the jurisdiction of this Court, C. J. Adams signed a cer-

tificate as a Notary Public for the State of Alabama, County of Dallas, that he had examined the family Bible in the possession of Carrie Lee Towns, which was published by Collins Clear Type Press and in which the year of publication was not shown, which Bible showed that John Towns had been born at Pleasant Hill, Alabama, on October 9, 1928, and that the name of his father was Walter Towns and the name of his mother was Carrie Lee Towns, and that said facts appeared to have been recorded many years ago, which said certificate was thereafter filed with a delayed certificate of birth covering John Towns, as supporting evidence; and at said time and place, the said C. J. Adams also signed a certificate as a Notary Public for the State of Alabama, County of Dallas, that he had examined the family Bible in the possession of Carrie Lee Towns, published by Collins Clear Type Press, [fol. 15] in which the year of publication was not shown, and that the Bible showed Samuel C. Towns to have been born at Pleasant Hill, Alabama, on June 9, 1930, and that the name of his father was Walter Towns and the name of his mother was Carrie Lee Towns, and that said facts appeared to have been recorded many years ago, which said certificate was thereafter filed with a delayed certificate of birth covering Samuel C. Towns, as supporting evidence; and at said time and place the said C. J. Adams also signed a certificate as Notary Public for the State of Alabama, County of Dallas, that he had examined the family Bible in the possession of Carrie Lee Towns, published by Collins Clear Type Press, in which the year of publication was not shown, and that the Bible showed Sammy B. Towns to have been born at Pleasant Hill, Alabama, on June 9, 1930, and that the name of his father was Walter Towns and the name of his mother was Carrie Lee Towns, and that said facts appeared to have been recorded many years ago, which said certificate was thereafter filed with a delayed certificate of birth covering Samuel B. Towns, as supporting evidence;

(7) That on or about the 10th day of May, 1944, at Selma, in Dallas County, Alabama, in the Northern Division of the Southern District of Alabama, and within the jurisdiction of this Court, Walter Towns and Carrie Lee Towns exhibited to Local Board No. 2, Dallas County, Alabama, certified copies of delayed certificates of birth

covering, respectively, Samuel B. Towns, Samuel C. Towns and John Towns, purporting to show that their respective dates of birth were June 9, 1930, June 9, 1930, and October 9, 1928, and represented to said Local Board that said birth certificates reflected the truth;

(8) That on, to wit, the 10th day of June, 1944, at Selma, in Dallas County, Alabama, in the Northern Division of the Southern District of Alabama, and [fol. 16] within the jurisdiction of this Court, Carrie Lee Towns made a statement to Local Board No. 2, Dallas County, Alabama, in substance, that Samuel B. Towns and Samuel C. Towns were born on June 9, 1930, and that John Towns was born on October 9, 1928, and that none of them was then liable for service under said Act;

(9) That on, to wit, the 10th day of June, 1944, at Selma, in Dallas County, Alabama, in the Northern Division of the Southern District of Alabama, and within the jurisdiction of this Court, Walter Towns made a statement to Local Board No. 2, Dallas County, Alabama, in substance, that Samuel B. Towns and Samuel C. Towns were born on June 9, 1930, and that John Towns was born on October 9, 1928, and that none of them was then liable for service under said Act;

(10) That on, to wit, the 10th day of June, 1944, at Selma, in Dallas County, Alabama, in the Northern Division of the Southern District of Alabama, and within the jurisdiction of this Court, Samuel B. Towns made a statement to Local Board No. 2, Dallas County, Alabama, in substance, that he was born on June 9, 1930, and was not then liable for service under said Act;

(11) That on, to wit, the 10th day of June, 1944, at Selma, in Dallas County, Alabama, in the Northern Division of the Southern District of Alabama, and within the jurisdiction of this Court, Samuel C. Towns made a statement to Local Board No. 2, Dallas County, Alabama, in substance, that he was born on June 9, 1930, and was not then liable for service under said Act;

(12) That on, to wit, the 10th day of June, 1944, at Selma, in Dallas County, Alabama, in the Northern Division of the Southern District of Alabama, and

[fol. 17] within the jurisdiction of this Court, John Towns made a statement to Local Board No. 2, Dallas County, Alabama, in substance, that he was born on October 9, 1928, and was not then liable for service under said Act;

Contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

Albert J. Tully, United States Attorney, Southern District of Alabama.

A True Bill: J. A. Bates, Foreman.
Filed in open Court June 27, 1945. Virgil C. Griffin, Clerk.

In United States District Court

Demurrers—Filed July 18, 1945.

[Title Omitted]

Comes the defendant, C. J. Adams, Alias Charlie Adams, and demurs to the indictment and each count thereof separately and severally on the following separate and several grounds, separately and severally:

1. Said count fails to allege sufficient facts to constitute an offense.

2. Said count fails to aver sufficient facts to show that the defendants violated the Selective Service Training and Service Act or any regulation or directive issued by any authority thereunder.

[fol. 18] 3. Said count fails to aver or set forth any duty resting upon the defendants under the Selective Training and Service Act to cause their children, Samuel B., Samuel C., and John Derry Towns to register with Local Board No. 1 or Local Board No. 2, Dallas County, Alabama.

4. For that said count fails to aver sufficient facts to show that the defendants knowingly or intentionally aided or abeted Samuel B., Samuel C. and John Derry Towns in evading registration with Local Board No. 1 or Local Board No. 2 in Dallas County, Alabama.

5. For that said count fails to allege sufficient facts to show that the defendants intentionally and knowingly aided and abeted Samuel B., Samuel C. and John Derry Towns in evading registration with Local Board No. 1 or Local Board No. 2 of Dallas County, Alabama.

6. For that Section 311, Title 50 of the Selective Training and Service Act places the defendants under no duty or obligation regarding the registration of Samuel B., Samuel C. and John Derry Towns with Selective Service Local Board having jurisdiction over them in Dallas County, Alabama.

7. For that the defendants had no notice by publication or otherwise that they were under duty or obligation to force the registration of Samuel B., Samuel C., and John Derry Towns.

8. For ought appearing from said law, the defendants were under no duty or obligation to do anything or refrain from doing anything toward the registration of Samuel B., Samuel C., or John Derry Towns.

9. For that the allegations of said count are mere conclusions and are not based upon sufficient facts to [fol. 19] show that the defendants unlawfully and knowingly aided, counseled or abeted Samuel B. Towns, Samuel C. Towns and John Derry Towns to unlawfully or knowingly fail or neglect to present themselves for and to submit for registration with Local Board No. 1 or Local Board No. 2, Dallas County, Alabama.

10. For that said indictment fails to set forth sufficient facts to show that Samuel B., Samuel C. and John Derry Towns were 18 years of age and subject to registration by Local Board No. 1 or Local Board No. 2 of Dallas County, Alabama.

11. For that said count fails to aver sufficient facts to show that Samuel B., Samuel C. and John Derry Towns were between the ages of 18 and 65 years on the 19th day of September, 1944.

12. For that said count fails to aver sufficient facts to show that Samuel B., Samuel C., and John Derry Towns were between the ages of 18 and 65 years on the 10th day of June, 1944.

13. For that said count fails to aver sufficient facts to show that Samuel B., Samuel C. and John Derry Towns were between the ages of 18 and 45 years, and therefore subject to registration under the Selective Training and Service Act on the 19th day of September, 1944.

14. For that said count fails to aver sufficient facts to show that the defendants during the period of time between the first day of January, 1942 and the 10th day of January, 1945, unlawfully, knowingly and feloniously conspired together with Samuel B., Samuel C. and John Derry Towns to commit an offense against the United States.

15. For that said count fails to aver sufficient facts to [fol. 20] show that the defendants did any unlawful act to cause Samuel B. Towns to evade registration under the Selective Training and Service Act.

16. For that said count fails to aver sufficient facts to show that the defendants did any unlawful act to cause Samuel C. Towns to evade registration under the Selective Training and Service Act.

17. For that said count fails to aver sufficient facts to show that the defendants did any unlawful act to cause John Derry Towns to evade registration under the Selective Training and Service Act.

18. For that said count fails to aver sufficient facts to show that Samuel B. Towns was born prior to June 9, 1930.

19. For that said count fails to aver sufficient facts to show that Samuel C. Towns was born prior to June 9, 1930.

20. For that said count fails to aver sufficient facts to show that John Derry Towns was born prior to October 9th, 1928.

21. For that said count alleging that Samuel B. Towns was born prior to June 9, 1930 is based upon insufficient evidence and hearsay testimony and not the best evidence.

22. For that said count alleging that Samuel C. Towns was born prior to June 9, 1930 is based upon insufficient evidence and hearsay testimony and not the best evidence.

23. For that said count alleging that John Derry Towns was born prior to October 9, 1928, is based upon insufficient evidence and hearsay testimony and not the best evidence.

[fol. 21] 24. For that said count fails to aver sufficient facts to show that the defendants knowingly and intentionally procured a delayed birth certificate for the purpose of assisting, aiding or abeting Samuel B., Samuel C., and John Derry Towns in evading registration under the Selective Service and Training Act.

25. For that said count fails to aver sufficient facts to show that any alleged statement made by the defendants to Local Board No. 1 or Local Board No. 2 was false or made with intention to assist anyone in evading registration.

26. For that said count fails to aver sufficient facts to show any direct relationship or acquaintanceship prior to March 25, 1944 between the defendants Walter Towns and Carrie Lee Towns and the defendant C. J. Adams.

27. For ought appearing from said count, the defendant, C. J. Adams had no knowledge or information about the ages of Samuel B., Samuel C. and John Derry Towns prior to the date of the delayed birth certificate or application therefor made out by him.

28. For that said count fails to aver any facts to show that the defendant, C. J. Adams even knew or was acquainted with Samuel B., Samuel C. and John Derry Towns prior to the date of the alleged affidavit for a delayed birth certificate prepared by him at defendant Carrie Lee Towns' request.

29. For that said count fails to aver any facts at all to show that the defendant, C. J. Adams, had any connection with, information of or interest in the family affairs of the defendants Walter Towns and Carrie Lee Towns prior to March 25th, 1944.

30. For that said count fails to aver sufficient facts to show that the defendant C. J. Adams was even [fol. 22] acquainted with or had any knowledge or information about the defendants Walter Towns and Carrie

Lee Towns or any member of their family prior to the 25th day of March, 1944.

31. For that said count fails to aver sufficient facts to show that there was a mutual understanding between the defendants to prevent Samuel B., Samuel C., and John Derry Towns from registering with their Local Boards in Dallas County, Alabama.

32. For that said count fails to aver sufficient facts to show that the defendants entered into a mutual agreement to commit an offense against the United States.

33. For that said count fails to aver sufficient facts to show that the defendants entered into a mutual agreement with a single design to accomplish a common purpose.

34. For that said count fails to aver sufficient facts to show an unlawful agreement between the defendants and a subsequent overt act on their part in furtherance of said agreement.

35. For that said count fails to aver an overt act done by the defendants or either of them in pursuance of and to effectuate the object of the alleged conspiracy.

36. For that said count fails to aver when said alleged conspiracy was entered into between the defendants.

37. For that said count fails to aver or set forth what overt act the defendant Walter Towns did in furtherance of said alleged conspiracy.

38. For that said count fails to aver what overt act the defendant, C. J. Adams, did in furtherance of said alleged conspiracy.

[fol. 23] 39. For that said count fails to aver what overt act the defendant, Carrie Lee Towns, did in furtherance of said alleged conspiracy.

40. For ought appearing from said count, the alleged statement made by Carrie Lee Towns to Local Board No. 2 in Dallas County, Alabama, was in fact true.

41. For that said count fails to aver with certainty the connection between the alleged overt act and the alleged conspiracy entered into by the defendants.

42. For that the time and place of said conspiracy is not set forth and sufficient facts are not set forth to show any casual connection between said alleged conspiracy and said alleged overt act.

43. For that the Selective Service and Training Act places the responsibility upon the person obligated to register and no duty rested upon the defendants regarding or concerning the registration of Samuel B., Samuel C. and John Derry Towns.

44. For that said count does not contain sufficient facts to show that the defendant, C. J. Adams, entered into a combination with Carrie Lee Towns and Walter Towns to accomplish a criminal purpose or some purpose not criminal by criminal means.

45. For that said count affirmatively shows that the defendant, C. J. Adams, was merely acting in his official capacity as a notary public in taking the statement or affidavit of the defendant Carrie Lee Towns in the preparation of said delayed birth certificate.

46. For that said count fails to aver sufficient facts to show that the defendant C. J. Adams had any [fol. 24] knowledge or information at the time he helped prepare the delayed birth certificates of Samuel B., Samuel C. and John Derry Towns at Carrie Lee Towns' request that the statements made by Carrie Lee Towns were not true.

47. For that said count fails to aver sufficient facts to show that there was a combination agreement or understanding between the defendant C. J. Adams and the defendant Carrie Lee Towns at the time the defendant C. J. Adams prepared the delayed birth certificates for Samuel B., Samuel C., and John Derry Towns at the request of the defendant Carrie Lee Towns for the purpose of committing an unlawful or criminal act.

48. For ought appearing from said count the defendant C. J. Adams had no prior knowledge or information of the ages of Samuel B., Samuel C. and John Derry Towns at the time he prepared said delayed birth certificates for them at the request of the defendant Carrie Lee Towns.

49. For that said count fails to aver sufficient facts to show that the defendant C. J. Adams had any knowledge or information at the time he prepared the delayed birth certificates for Samuel B., Samuel C. and John Derry Towns at the request of the defendant, Carrie Lee Towns that same were to be used in helping them evade registration with Local Board No. 1 and No. 2, in Dallas County, Alabama.

50. For that said count fails to aver sufficient facts to show that the defendant C. J. Adams had any intention whatsoever to enter into a conspiracy with the defendants Carrie Lee Towns and Walter Towns to do any unlawful or criminal act.

51. For that said count fails to aver sufficient facts to show that the defendant C. J. Adams had any [fol. 25] guilty intent to enter into a conspiracy with the defendant Carrie Lee Towns to do any unlawful or criminal act or to do a lawful act in an unlawful way.

Edmund Pettus By Wm. B. McCullough, Attorney for Defendant, C. J. Adams, Alias Charlie Adams.

Demurrers overruled this Oct. 1st, 1945 and deft. excepts.

John McDuffie, Judge.

[File endorsement omitted]

In United States District Court

Demurrers—Filed September 20, 1945.

[Title Omitted]

Comes the defendant, C. J. Adams, alias Charlie Adams, and files the following demurrers to the Indictment and each count thereof separately and severally on the following separate and several grounds, separately and severally, with those heretofore filed:

1. That said count fails to set out an agreement to defraud the United States Government and facts showing that the parties charged were in a position to commit fraud and also failed to allege the overt act or acts which constitute said fraud.

2. That said count fails to allege any overt act on the part of C. J. Adams, alias Charlie Adams.

[fol. 26] 3. That said count fails to set forth facts so distinctly as to advise the accused of the charge which he has to meet fully enough to give him a fair opportunity to prepare his defense, so particularly as to enable him or avail himself of a conviction or acquittal in defense of another prosecution for the same crime, and so clearly that the Court, upon an examination of the Indictment, may be able to determine whether or not under the law, the facts there stated are sufficient to support conviction.

4. That said count does not allege fully and clearly the criminal or illegal purpose.

T. G. GAYLE, Attorney for C. J. Adams, alias Charlie Adams. T. G. Gayle.

Copy to Mr. Albert Tully, Sept. 24, 1945.

Virgil C. Griffin, Clerk.

Demurrers overruled this Oct. 1st, 1945.
John McDuffie.

Defendant excepts.

[file endorsement omitted]

[fol. 27] In the United States District Court

Motion to Quash Indictment—Filed September 20, 1945

[Title omitted]

Comes C. J. Adams, alias Charlie Adams, and moves the Court to quash the indictment and each count thereof in case #11470, and for grounds of motion, says:

1. That he, the said C. J. Adams, alias Charlie Adams, was summoned by the United States of America as a witness for the said Government in the case of the United States of America vs. John Derry Towns, alias John Towns, alias J. D. Towns, and Samuel B. Towns, alias Sammy B. Towns, alias Samuel Towns, alias Sammy Towns, alias Isaac Town, alias Isham Town, alias Bit Towns, alias Buddy Towns, and Samuel C. Towns, alias

Sammy C. Towns, alias Samuel Towns, alias Sammy Towns, alias Isaac Town, alias Isham Town, alias Bit Towns, alias Buddy Towns, in case numbers 11420, 11430, and 11429, and that he was placed on the stand in the above named and numbered cases and did testify for the said United States of America and at the time he was placed on the stand he was not advised by the Honorable Judge of said Court of his rights not to testify to anything that might incriminate him, and that after testifying in behalf of United States of America in the above named and numbered cases he was jointly indicted with Walter Towns and Carrie Lee Towns without being advised of his Constitutional rights.

2. That the said Honorable Judge failed to advise him of his Constitutional rights that he did not have to testify to any evidence that might incriminate him, and that he did give testimony in said cases as a witness on behalf of the United States of America, which said testimony was incriminating to him.

3. That said Honorable Judge failed to advise him that [fol. 28] if he should testify in the above named and numbered cases that said testimony could be used against him in a subsequent trial or indictment and that he did give testimony in the above numbered and named styled cases and was subsequently indicted with Walter Towns and Carrie Lee Towns under case No. 11470.

T. G. Gayle, Attorney for C. J. Adams, alias Charlie Adams.

Copy to Mr. Albert Tully, September 24, 1945.
Virgil C. Griffin, Clerk.

Motion overruled this Oct. 1st, 1945. Deft. excepts.
John McDuffie, Judge.

[File endorsement omitted]

IN UNITED STATES DISTRICT COURT

ORDER OVERRULING DEMURRERS AND MOTION TO QUASH—Filed October 1, 1945

[Title omitted]

This cause comes on to be heard on the demurrers to the indictment and the motion to quash the indictment, the same being argued in open Court by Attorneys of Record and being considered by the Court.

It is ordered by the Court that the demurrers to the indictment be, and the same hereby are, overruled to which order the Defendants except.

[fol. 29] It is further ordered that the motion of defendant Adams be, and the same hereby is, overruled, to which the defendant Adams excepts.

Done at Mobile this the 1st day of October, 1945.

John McDuffie, Judge.

[File endorsement omitted]

Virgil C. Griffin, Clerk, by Minnie Pearl Cox, Deputy Clerk.

IN UNITED STATES DISTRICT COURT

ARRAIGNMENT AND PLEA—November 5, 1945

[Title omitted]

Comes the United States of America by its Attorney, the Honorable Albert J. Tully, and also comes the defendant, C. J. Adams, alias Charlie Adams in his own [fol. 30] proper person and by his Attorney, the Honorable T. G. Gayle, who being arraigned in open Court and the charges against him being explained to him, pleads not guilty thereto.

IN UNITED STATES DISTRICT COURT

JURY EMPANELED

[Title omitted]

WEDNESDAY MORNING, NOVEMBER 7TH, A. D., 1945.

Court met pursuant to adjournment. Present the Honorable John McDuffie, Judge, presiding.

It appearing to the Court that the defendant, C. J. Adams alias Charlie Adams was arraigned in open Court in his own proper person on November 5th, 1945 and by his Attorney, the Honorable T. G. Gayle entered a plea of not guilty.

Now on this the 7th day of November, 1945, comes the United States of America by its Attorneys, the Honorable Albert J. Tully and the Honorable Alvin McConnell and also comes the defendant, C. J. Adams alias Charlie Adams in his own proper person and by his Attorney, the Honorable T. G. Gayle into open Court for trial, and

Thereupon, to try the issue joined between the United States of America and the defendant, C. J. Adams alias Charlie Adams comes a jury of good and lawful men, namely, J. H. Huckaby, Foreman, and eleven others, who are duly empaneled and sworn according to law, and upon the agreement of the United States of America and the defendant, with the approval of the Court, that the same be done without prejudice to the defendant, one alternate juror was selected and sworn in this case.

[fol. 31] Witnesses are examined and the case is continued until tomorrow morning at 9:30 A.M.

IN UNITED STATES DISTRICT COURT

ORDER ALLOWING COUNTS 1, 3 and 5 WITHDRAWN AS TO ADAMS.

[Title omitted]

On motion of the Honorable Alvin McConnell, United States Attorney, that he be allowed to withdraw Counts 1, 3 and 5 of the indictment as to C. J. Adams alias Charlie Adams, said motion being made in Open Court,

It is ordered by the Court that Counts 1, 3 and 5 of the indictment be, and the same hereby are, allowed withdrawn as to C. J. Adams alias Charlie Adams.

Made this the 8th day of November, 1945.

John McDuffie, U. S. District Judge.

Filed and entered this the 8th day of November A. D. 1945.

Virgil C. Griffin, Clerk, by Minnie Pearl Cox, Deputy Clerk.

IN UNITED STATES DISTRICT COURT

VERDICT AND JUDGMENT

[Title Omitted]

THURSDAY MORNING, NOVEMBER 8TH, A. D., 1945

Court met pursuant to adjournment. Present the Honorable John McDuffie, Judge, presiding.

[fol. 32] The trial of this case is resumed.

Now comes the United States of America by their Attorneys, Albert J. Tully and Alvin McConnell and also comes the defendant, C. J. Adams alias Charlie Adams into open Court in his own proper person and by his Attorney, the Honorable T. G. Gayle.

Now on motion of the United States Attorneys, it is ordered that Counts One, Three and Five of the indictment be withdrawn.

Now comes a jury of good and lawful men, namely, J. H. Huckaby, Foreman, and eleven others, who were duly empaneled and sworn according to law on November 7th, 1945, and who having heard the evidence and the charge of the Court upon their oaths do say:

"We the Jury find the Defendant C. J. Adams Guilty as charged in the indictment.

J. H. Huckaby, Foreman."

It is, therefore, ordered and adjudged by the Court that the defendant, C. J. Adams alias Charlie Adams is guilty as charged in the indictment and that the passing of sentence upon the defendant, C. J. Adams alias Charlie Adams be, and the same hereby is, postponed until November 9th, 1945.

[fol. 33] IN UNITED STATES DISTRICT COURT

ORDER OF SENTENCE—Filed Nov. 9, 1945.

[Title Omitted]

It appearing to the Court that the defendant, C. J. Adams alias Charlie Adams, entered a plea of not guilty in his own proper person in open Court and by his At-

torney, the Honorable T. G. Gayle on November 5th, 1945, and on November 8th, 1945, a jury and verdict of guilty was returned against the defendant, C. J. Adams alias Charlie Adams, and the passing of sentence upon the defendant, C. J. Adams alias Charlie Adams was postponed.

Now on November 9th, 1945, comes the defendant, C. J. Adams alias Charlie Adams in his own proper person into open Court for sentence, and the defendant, C. J. Adams alias Charlie Adams being now asked whether he had anything to say why judgment should not be pronounced against him, and no sufficient cause to the contrary being shown or appearing to the Court,

It is now ordered by the Court that the defendant, C. J. Adams alias Charlie Adams be, and he hereby is, sentenced to be committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of one (1) year and one (1) day, and to pay a fine of two hundred and fifty ($250.00) dollars, the execution of said sentence to begin on December 10th, 1945, and to stand committed until such fine shall be paid, or until the defendant, C. J. Adams alias Charlie Adams shall be otherwise discharged by due course of law.

It is further ordered by the Court that jurisdiction in this cause be, and the same hereby is, retained through the ensuing Term of Court.

[fol. 34] It is further ordered that the Clerk deliver a certified copy of this judgment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.

Made at Selma, Alabama, this the 9th day of November A. D., 1945.

John McDuffie, United States District Judge.

IN UNITED STATES DISTRICT COURT

MOTION FOR NEW TRIAL

[Title Omitted]

Comes C. J. Adams alias Charlie Adams and moves the Court to set aside the verdict in the above styled and numbered case and for grounds of motion, says:

1. That said verdict is contrary to the evidence in said case.

2. That said verdict is contrary to the law in said case.

3. That said verdict is contrary to the law and the evidence in said case.

4. That said Court erred in that it admitted in evidence a birth certificate which was registered in the name of Mary and Sally Peterson, which was testified to by the mother, Mary Lizzie Peterson, as being and always being [fol. 35] known as Ruby and Reba Peterson and that said Solicitor failed to show that in that neighborhood or surrounding that there were not any other twins born of the same father and mother, Mary Lizzie Peterson and Riley Peterson, and that ought appears in this case that there could have been other twins born to parents by the name of Mary Lizzie Peterson and Riley Peterson in the same community.

5. That said Solicitor failed to show or to prove that Mary and Sally Peterson were the same as Ruby and Reba Peterson.

6. That said Court erred in allowing in evidence a birth certificate of Isham and Ishom Towns to be introduced in evidence for that said United States failed to show that Isham and Ishom Towns were the same as Samuel B. Towns and Samuel C. Towns, and further that Isham and Ishom Towns are one and the same as Samuel B. Towns and Samuel C. Towns.

7. That said United States in its proof failed to prove that Ishom and Isham Towns were one and the same twins.

8. That said United States Government also failed to prove that there were no other parents by the same name in said community that could have had twins and named them Isham and Ishom Towns in that community or neighborhood.

9. That said Court failed to give certain written charges which were requested by the defendant, C. J. Adams alias Charlie Adams, and which number of said charges which were refused are at this time unknown to said defendant, C. J. Adams alias Charlie Adams.

10. That said United States Government failed in every respect to produce any evidence to show that the defendant, C. J. Adams alias Charlie Adams knowingly entered [fol. 36] into any conspiracy to aid or abet Samuel B. Towns, Samuel C. Towns and John Towns, to avoid registration.

11. That said Court failed to show any connection whatsoever between Carrie Lee Towns, Walter Towns, Samuel B. Towns, Samuel C. Towns and John Towns in regard to a conspiracy by the defendant, C. J. Adams alias Charlie Adams, to assist them in trying to, knowingly, unlawfully aid and abet Samuel B. Towns, Samuel C. Towns and John Towns to avoid registration under the Selective Service Act.

12. That said United States failed in every respect to introduce any evidence of any kind, or character that the jury could infer that the defendant, C. J. Adams alias Charlie Adams, was a party to any conspiracy.

13. That also said United States Government in said indictment elected a date on which said overt act was committed by said defendant, C. J. Adams alias Charlie Adams, and they failed to introduce any evidence of any kind to show that said C. J. Adams alias Charlie Adams committed any act under the said allegations in said indictment in anyway to aid or abet Samuel B. Towns, Samuel C. Towns and John Towns to avoid registration.

14. That said evidence failed in all respects to show any connection or any agreement or overt act by any parties to connect the said defendant, C. J. Adams alias Charlie Adams, in either to aid or abet or knowingly assist said Samuel B. Towns, Samuel C. Towns and John Towns to avoid or fail to register as required under the Selective Service Act.

15. That the said United States Government failed to introduce any evidence to show that the defendant, C. J. Adams alias Charlie Adams, had any way or any knowledge of or knew for what purpose the said affidavits were [fol. 37] to be used, but on the contrary the evidence of C. J. Adams alias Charlie Adams, was uncontradictory either by implication or direct testimony to the evidence that he had any knowledge of any kind or description

relative to what use that said affidavits were to be used for.

16. That said United States Government failed to prove in any way, act, conversation, association, meeting, seeing, being with, associating with said Walter Towns, Carrie Lee Towns, Samuel B. Towns, Samuel C. Towns and John Towns, or being visited by said Walter Towns, Carrie Lee Towns, Samuel B. Towns, Samuel C. Towns and John Towns, or being in the neighborhood of said Walter Towns, Carrie Lee Towns, Samuel B. Towns, Samuel C. Towns and John Towns that might be in any to implicate him as co-conspirator.

17. That said evidence by the United States Government failed in every respect to show either by implication or direct evidence or otherwise any connections that said C. J. Adams alias Charlie Adams might have derived from forming said co-conspiracy to avoid the Selective Service Act.

18. That from said evidence in the case either by implication or direct evidence the United States Government failed to show that the defendant, C. J. Adams alias Charlie Adams, actual or knowingly conspired with said Walter Towns, Carrie Lee Towns, Samuel B. Towns, Samuel C. Towns and John Towns to violate the Selective Service law.

T. G. Gayle, Attorney for C. J. Adams alias Charlie Adams, U. S. District Court, Sou. Dist. Ala., Filed in Clerk's Office, Nov. 13, 1945, Virgil C. Griffin, Clerk.

[fol. 38] IN UNITED STATES DISTRICT COURT

AMENDED MOTION FOR NEW TRIAL

[Title Omitted]

Comes C. J. Adams alias Charlie Adams with leave of the Court first had and obtained and amends his motion to set aside the verdict in the above styled and numbered case and for grounds of motion, says:

1. That the Court erred in failing to give the following

charges as requested by the Defendant C. J. Adams alias Charlie Adams:

"2. I charge you Gentlemen of the Jury that if you believe the evidence in this case you cannot convict the defendant, C. J. Adams alias Charlie Adams in Count 2 of said indictment.

4. I charge you Gentlemen of the Jury that if you believe the evidence in this case you cannot convict the defendant, C. J. Adams alias Charlie Adams, in Count 4 of said indictment.

6. I charge you Gentlemen of the Jury that if you believe the evidence in this case you cannot convict the defendant, C. J. Adams alias Charlie Adams, in Count 6 of said indictment.

7. I charge you Gentlemen of the Jury that if you believe the evidence in this case you cannot convict the defendant, C. J. Adams alias Charlie Adams, in Count 7 of said indictment.

9. I charge you Gentlemen of the Jury before you can convict the defendant, C. J. Adams alias Charlie Adams, under Count 2 of said indictment, you must be satisfied beyond a reasonable doubt and to a moral certainty that the said C. J. Adams alias Charlie Adams, did on to wit: the 19th day of September, 1944, unlawfully [fol. 39] and knowingly aid, counsel and abet the said Samuel B. Towns to unlawfully and knowingly fail and neglect to present himself for and submit to registration at said Local Board No. 2, Dallas County, Alabama.

11. I charge you Gentlemen of the Jury before you can convict the defendant, C. J. Adams alias Charlie Adams, under Count 4 of said indictment, you must be satisfied beyond a reasonable doubt and to a moral certainty that the said C. J. Adams alias Charlie Adams did on to wit: the 19th day of September, 1944, unlawfully and knowingly aid, counsel and abet the said Samuel C. Towns to unlawfully and knowingly fail and neglect to present himself for and submit to registration at said Local Board No. 2, Dallas County, Alabama.

16. I charge you Gentlemen of the Jury that before you can convict the defendant, C. J. Adams alias Charlie

Adams, under Count 2 of said indictment, you must be satisfied beyond a reasonable doubt and to a moral certainty from the evidence that the said C. J. Adams alias Charlie Adams did on to wit: the 19th day of September, 1944, unlawfully aid, counsel and abet the said Samuel B. Towns to unlawfully and knowingly fail and neglect to present himself for and submit to registration at said Local Board No. 2, in Dallas County, Alabama.

18. I charge you Gentlemen of the Jury that before you can convict the defendant, C. J. Adams alias Charlie Adams, under Count 4 of said indictment, you must be satisfied beyond a reasonable doubt and to a moral certainty from the evidence that the said C. J. Adams alias Charlie Adams did on to wit: the 19th day of September, 1944, unlawfully aid, counsel and abet the said Samuel C. Towns to unlawfully and knowingly fail and neglect to present himself for and submit to registration at said Local Board No. 2 in Dallas County, Alabama.

[fol. 40] 20. I charge you Gentlemen of the Jury that before you can convict the defendant, C. J. Adams alias Charlie Adams, under Count 6 of said indictment, you must be satisfied beyond a reasonable doubt and to a moral certainty from the evidence that the said C. J. Adams alias Charlie Adams did on to wit: the 19th day of September, 1944, unlawfully aid, counsel and abet the said John Towns to unlawfully and knowingly fail and neglect to present himself for and submit to registration at said Local Board No. 2, in Dallas County, Alabama.

23. I charge you Gentlemen of the Jury that before you can convict the defendant, C. J. Adams alias Charlie Adams, under count 2 of said indictment, you must be satisfied beyond a reasonable doubt and to a moral certainty that the said defendant, C. J. Adams alias Charlie Adams, did on to wit: the 19th day of September, 1944, unlawfully aid the said Samuel B. Towns to unlawfully and knowingly fail and neglect to present himself for and submit to registration at said Local Board No. 2 in Dallas County, Alabama.

25. I charge you Gentlemen of the jury that before you can convict the defendant, C. J. Adams alias Charlie Adams, under Count 4 of said indictment, you must be

satisfied beyond a reasonable doubt and to a moral certainty that the said defendant, C. J. Adams alias Charlie Adams, did on to wit: the 19th day of September, 1944, unlawfully aid the said Samuel C. Towns to unlawfully and knowingly fail and neglect to present himself for and submit to registration at said Local Board No. 2 in Dallas County, Alabama.

27. I charge you Gentlemen of the Jury that before you can convict the defendant, C. J. Adams alias Charlie Adams, under count 6 of said indictment you must be satisfied beyond a reasonable doubt and to a moral certainty that the said defendant, C. J. Adams alias Charlie [fol. 41] Adams, did on to wit: the 19th day of September, 1944, unlawfully aid the said John Towns to unlawfully and knowingly fail and neglect to present himself for and submit to registration at said Local Board No. 2 in Dallas County, Alabama.

30. I charge you Gentlemen of the Jury that before you can convict the defendant, C. J. Adams alias Charlie Adams, under Count 2 of said indictment, you must be satisfied beyond a reasonable doubt and to a moral certainty that the said defendant, C. J. Adams alias Charlie Adams, did on to wit: the 19th day of September, 1944, knowingly aid the said Samuel B. Towns to unlawfully and knowingly fail and neglect to present himself for and submit to registration at said Local Board No. 2 in Dallas County, Alabama.

32. I charge you Gentlemen of the Jury that before you can convict the defendant, C. J. Adams alias Charlie Adams, under Count 4 of said indictment, you must be satisfied beyond a reasonable doubt and to a moral certainty that the said defendant, C. J. Adams alias Charlie Adams, did on to wit: the 19th day of September, 1944, knowingly aid the said Samuel C. Towns to unlawfully and knowingly fail and neglect to present himself for and submit to registration at said Local Board No. 2 in Dallas County, Alabama.

36. I charge you Gentlemen of the Jury that before you can convict the defendant, C. J. Adams alias Charlie Adams, under Count 2 of said indictment, you must be satisfied beyond a reasonable doubt and to a moral cer-

tainty that the said defendant, C. J. Adams alias Charlie Adams, did on to wit: the 19th day of September, 1944, counsel and abet with the said Samuel B. Towns to unlawfully and knowingly fail and neglect to present himself for and submit to registration at said Local Board No. 2 in Dallas County, Alabama.

38. I charge you Gentlemen of the Jury that be-
[fol. 42] fore you can convict the defendant, C. J. Adams alias Charlie Adams, under Count 4 of said indictment, you must be satisfied beyond a reasonable doubt and to a moral certainty that the said defendant, C. J. Adams alias Charlie Adams, did on to wit: the 19th day of September, 1944, counsel and abet with the said Samuel C. Towns to unlawfully and knowingly fail and neglect to present himself for and submit to registration at said Local Board No. 2 in Dallas County, Alabama.

40. I charge you Gentlemen of the Jury that before you can convict the defendant, C. J. Adams alias Charlie Adams, under Count 6 of said indictment, you must be satisfied beyond a reasonable doubt and to a moral certainty that the said defendant, C. J. Adams alias Charlie Adams, did on to wit: the 19th day of September, 1944, counsel and abet with the said John Towns to unlawfully and knowingly fail and neglect to present himself for and submit to registration at said Local Board No. 2 in Dallas County, Alabama.

41. I charge you Gentlemen of the Jury that before you can convict the defendant, C. J. Adams, alias Charlie Adams, under Count 7 of said indictment, you must be satisfied from the evidence beyond a reasonable doubt and to a moral certainty that said defendant, C. J. Adams alias Charlie Adams, did at the time he took the acknowledgements of Carrie Lee Towns, Samuel B. Towns, Samuel C. Towns and John Towns, and at the time he certified to the dates as shown by the Bible he had knowledge that said affidavits and acknowledgments were to be used for the purpose to aid and assist the said Samuel B. Towns, Samuel C. Towns and John Towns to fail to present themselves for registration at the proper time and place as alleged in said indictment.

42. I charge you Gentlemen of the Jury that before you can convict the defendant, C. J. Adams alias

[fol. 43] Charlie Adams, under Count 7 of said indictment, you must believe beyond a reasonable doubt and to a moral certainty that acts as set out in Paragraph 6 of said indictment were committed with the knowledge that they were to be used in order to aid and abet Samuel B. Towns, Samuel C. Towns and John Towns to commit an offense against the United States by violating Sec. 11 of said Act.

43. I charge you Gentlemen of the Jury that before you can convict the defendant, C. J. Adams alias Charlie Adams, you must be convinced from the evidence beyond a reasonable doubt that the said C. J. Adams alias Charlie Adams entered into a conspiracy as charged in Count 7 of said indictment prior to June 11, 1944."

T. G. Gayle, Attorney for C. J. Adams, alias Charlie Adams, U. S. District Court Sou. Dist. Ala. Filed in Clerk's Office Nov. 23, 1945. Virgil C. Griffin, Clerk.

IN UNITED STATES DISTRICT COURT

ORDER OVERRULING AMENDED MOTION FOR NEW TRIAL—Filed November 21, 1945

[Title Omitted]

This cause coming on to be heard on a motion to set aside the verdict and grant a new trial, after argument and due consideration, the Court is of the opinion that the motion should be denied.

It is therefore ordered, adjudged and decreed that the [fol. 44] motion of defendant Adams as amended be and the same is overruled, to which action of the Court the defendant duly excepts.

Done at Mobile, Alabama, this 21st day of November 1945.

John McDuffie, District Judge.

(File endorsement omitted.)

In United States District Court

Notice of Appeal and Grounds of Appeal

[Title Omitted]

Name and address of Appellant: C. J. Adams alias Charlie Adams, 821 First Avenue, Selma, Alabama.

Name and address of Appellant's attorney: T. G. Gayle, 1104½ Water Avenue, Selma, Alabama.

Offense: That Walter Towns and Carrie Lee Towns and C. J. Adams alias Charlie Adams did unlawfully, knowingly, willfully and feloniously conspire together and/with said Samuel C. Towns, Samuel B. Towns and John Towns and others unknown, to commit offenses against the United States by violating Section 11, of the Selective Training and Service Act of 1940, as amended.

Also, that Walter Towns, Carrie Lee Towns and C. J. Adams alias Charlie Adams did unlawfully, knowingly aid, counsel and abet said Samuel C. Towns, Samuel B. Towns [fol. 45] and John Towns to fail to register under the Selective Training and Service Act of 1940, as amended.

Date of Judgment: November 8, 1945.

Brief description of Judgment or Sentence: $250.00 fine and sentenced to one year and a day.

I, the above-named Appellant, hereby appeal to the United States Circuit Court of Appeals for the Fifth Circuit from the judgment above mentioned on the grounds set forth below.

C. J. Adams, Appellant.

Dated: November 21st, 1945.

U. S. District Court, Sou. Dist. Ala. Filed in Clerk's Office Nov. 23, 1945. Virgil C. Griffin, Clerk.

* * * * * * *

Grounds of appeal:

1. That the Judge failed to give the general affirmative charge as requested in written charges 2, 4, 6 and 7.

2. That the Court erred in refusing to give the following numbered written charges as requested by the Appellant, namely charges 9, 11, 16, 18, 20, 23, 25, 30, 32, 36, 38, 40, 41, 42 and 43, which charges were to the effect that the Jury would have to be convinced beyond a reasonable

doubt and to a moral certainty that C. J. Adams alias Charlie Adams was guilty on the 19th day of September, 1944, the date alleged in the indictment as being the date the crime was committed.

[fol. 46] 3. In the indictment the defendant, C. J. Adams alias Charlie Adams was charged with unlawfully, knowingly aid, counsel and abet Samuel B. Towns, Samuel C. Towns and John Towns to neglect to present themselves for registration under the Selective Service Act and set out in said indictment that the 19th day of September, 1944, as the date that said crime was alleged to have been committed.

4. That there were a number of charges setting out each element as charged in the indictment to be proven beyond a reasonable doubt that the alleged crime was committed on the date as alleged in said indictment, namely; the 19th day of September, 1944.

5. That the Court allowed in evidence a birth certificate to prove that the twins whose names were Reba and Ruby Peterson and who were born the same year as Samuel C. Towns and Samuel B. Towns, which birth certificate showed the names of the twins as Mary and Sally Peterson without the United States having proven that they were one and the same persons as Reba and Ruby Peterson and without having shown there could not have been other twins born to people in that neighborhood of the same names as shown in said certificate.

6. That the Court allowed in evidence a birth certificate as proof that the twins whose names were Samuel B. Towns and Samuel C. Towns and which birth certificate recorded them as being named Isham and Ishom Towns without showing that Isham and Ishom Towns were one and the same persons as Samuel B. Towns and Samuel C. Towns and without having shown that there could not have been other twins born to other people in that neighborhood of same names as shown in said certificate.

7. The Court erred in over-ruling numerous demurrers in said indictment.

[fols. 47-48] T. G. Gayle, Attorney for Appellant, U. S. District Court, Sou. Dist. Ala. Filed in Clerk's Office Nov. 23, 1945. Virgil C. Griffin, Clerk.

IN UNITED STATES DISTRICT COURT

ORDER FIXING BOND—Filed November 23, 1945

[Title Omitted]

The defendant, C. J. Adams alias Charlie Adams, through his attorney, Thomas G. Gayle, having this day filed his notice of appeal in the above styled cause, it is now ordered that C. J. Adams alias Charlie Adams be released from custody pending his appeal upon his giving supersedeas bond in the sum of One Thousand Dollars ($1,000.00) with good and sufficient surety to be approved by the Court.

Done at Mobile, Alabama, this 23rd day of November 1945.

John McDuffie, District Judge

Supersedeas Bond on appeal for $1,000.00 approved and filed Nov. 28, 1945 omitted in printing.

[fol. 49] IN UNITED STATES DISTRICT COURT

ORDER EXTENDING TIME FOR FILING BILL OF EXCEPTIONS, ETC.—Filed December 17, 1945

[Title Omitted]

The defendant-appellant, C. J. Adams alias Charlie Adams, having filed his motion praying the court to enter an order extending for a period of ninety (90) days from the date of Notice of Appeal the time within which the Bill of Exceptions may be established and the Transcript of the Record on Appeal filed, setting forth in said motion the grounds therefor, and the court having considered the same and being of the opinion that the extension of time prayed for in said motion is required in the interest of justice,

It is ordered that the time within which the Bill of Exceptions may be established and the Transcript of the [fol. 50] Record on Appeal filed be extended for a period

of ninety (90) days from the date of Notice of Appeal, filed November 23, 1945.

Made this 17th day of December 1945.

John McDuffie, Judge

(File endorsement omitted)

IN UNITED STATES DISTRICT COURT

BILL OF EXCEPTIONS—Filed March 14, 1946

Be it remembered that this cause coming on to be heard on the 7th day of November, 1945, and that being a day of a regular term of the United States District Court for the Southern District of Alabama, Northern Division, in which said district the indictment had been returned and the Defendant being present, the following proceedings were had, that is to say:—

The defendant upon being arraigned plead not guilty and upon being questioned by the Court both the United States Government and the defendant announced they were ready for trial.

MARY LIZZIE PETERSON, witness on behalf of the Government testified on direct examination, as follows: My name is Mary Lizzie Peterson. I am a sister of Carrie Lee Towns, and my husband's name is William Peterson. My name before I was married was Mary Lizzie Smiley. I have only one set of twins. Their names are Reby and Ruby. I know the twins of my sister, Carrie Lee Towns. I do not know whether their names are Sammy B. and Samuel C. Towns. They called them Bit and Buddy. I live near my sister. We live in the same community, and [fol. 51] have lived there all of our lives. I do not know exactly the year her twins were born, but they were born the same year that my twins were born. I aint knowed nothing about but one set of twins born to her. I know all of her children that are living and she only had one set of twins. That is the set of twins born the same year as mine were. The mid-wife that waited on me when my twins were born was Silla McLeod. She is now dead. My twins were born in 1923 in December. They were born at

Berlin, also known as Pleasant Hill, Alabama, and both of them were girls. My husband is a farmer.

Mr. McConnell: If the court please, I offer in evidence certified copies of birth certificates of Mary and Sally Peterson.

Mr. Gayle: Just a minute, your Honor. May I ask one question of this witness before these are offered?

Judge McDuffie: Yes, sir.

Mr. Gayle: Were these delayed birth certificates or given at the time your children were born?

A. I don't know nothing about these birth certificates. I don't have any birth certificates for any of my children.

Mr. Gayle: Then, we object.

Mr. McConnell: If the court please, they are properly certified copies of the records. They show on their face they are not delayed birth certificates, but they were filed at the time those children were born, and the children have been identified as the only twins this woman had. They are self proving.

Mr. Gayle: She states she knows nothing about them. I object on the further ground that it is not established that this is the mother of those identical children except her testimony that she is the mother.

Judge McDuffie: I cannot agree with your objection on the ground that she does not know anything about the birth certificates. They may be obtained without her knowing they were gotten.

[fol. 52] Mr. McConnell: They were filed without anything for the parents to do with them. They are filed by the midwife.

Judge McDuffie: By the midwife and doctors. The parents do not know anything about birth certificates. The parents know when the child is born. The father and mother themselves do not have to record the birth of a child. It is those who attend and who are clothed with authority and responsibility who make the record of births.

Mr. McConnell: I would like to ask one further question. Do you have any child named Mary Peterson and one named Sally Peterson?

A. I don't. I only had one set of twins. They never had but one name, Reby and Ruby.

Mr. McConnell: This is Sally and Mary.

Mr. Gayle: I object on that ground.

Mr. McConnell: I now offer them in evidence, if the court pleases.

Judge McDuffie: If they are not certificates of her twins, how do you expect them to be relevant?

Mr. McConnell: For this reason. This woman has testified she had only one set of twins, and they were born in December, 1923. Her name at that time was Smiley. She has testified that the name of the father of those twins was William Peterson, her post-office address at that time was Berlin, the birth place was Pleasant Hill, the husband's occupation was farming and that the midwife was Silla McLeod, she had no child by the name of Mary and Sally and only one set of twins. Having established the fact that the parties were identical, it is immaterial what name was given them by the midwife at the time those certificates were filed. I have a case in support of that, if the court wants it.

Judge McDuffie: I think we had this question up when the Towns boys were tried.

Mr. McConnell: Yes, sir, we did.

[fol. 53] Judge McDuffie: Who named your children, your twins?

A. I named one, and my mother named one. They never had but one name. That is the name that was given to the midwife, Reby and Ruby.

Mr. McConnell: You don't know whether the midwife gave them a name of her own?

Mr. Gayle: I object.

Judge McDuffie: Overruled.

Mr. Gayle: I except.

A. I sure don't know what name she turned in. I know what name I gave. I know I aint never owned any children by that name.

Judge McDuffie: You are using this testimony to prove not the names of those twins, but to substantiate the fact that twins were born to this witness on that date and near the date of those who were prosecuted here.

Mr. McConnell: I seek to establish definitely the date of birth of this woman's twins, I care not what their names may be. She says they were born in December, on the first Sunday in December, 1923. The certificate reads Sunday, December, 1923.

Judge McDuffie: I think that is admissible for that purpose.

Mr. Gayle: I except to your Honor's ruling.

Judge McDuffie: I think the rule is now that you don't have to take an exception.

Mr. Tully: That is correct. No exception is necessary.

Judge McDuffie: If the Court is wrong, and that error is pointed out to Appellate Court, whether you except or not, the court has done you an injury.

Thereupon, certified copy of birth certificate of Mary Peterson was marked Plaintiff Exhibit No. 1, [fol. 54] and certified copy of birth certificate of Sally Peterson was marked Plaintiff Exhibit No. 2.

I know that Carrie's twins were born first. They were born the same year as mine were, but they were born first.

On cross-examination the witness stated: My twins names have always been Reby and Ruby. They have never been known by any other name. I gave that name to the midwife at the time they were born. I had a record of the dates that my twins were born, but I aint got it now, at least I had their birth certificates, but my daddy's house got burned up and the birth certificate got burned up. I have no record except my own knowledge that they were born in 1923. I had it in the bible but the bible burned up when my daddy's house burned. I have ten children living and one dead. I do not know all of their birthdays. I know my oldest child was born in 1918 and my next oldest child was born in 1919. My youngest child is 8 years old. I could not tell you the birthdays of the others. I could not tell you how many children my sister has. I live near my sister and go to see her sometime. I don't know what month her twins were born in. I know that she had twins before mine were born. I do not know what their names were other than they called them Bit and Buddy.

On re-direct examination, the witness testified: I know she had a son named John Towns. I do not know whether he was older or younger than the twins.

The witness was thereupon excused.

WILLIAM PETERSON, witness on behalf of the Government testified on direct examination as follows: I am the husband of Mary Lizzie Peterson. I am the father of Reby and Ruby Peterson. I remember when they were born. I [fol. 55] do not have any other twins besides these. I know Water and Carrie Towns. I lived in the same community with them for sometime. They had twins whom they called Bit and Buddy. They have one set of twins to my knowledge. I know when Bit and Buddy were born. I was living in that community at that time. I know that the boys were born before my girls. I don't exactly know how long before my girls were born, that they were born, but to my understanding they were born in the same year. I know John Derry Towns. I do not know whether he is older or younger than Bit and Buddy.

On cross-examination the witness testified: I have ten living children. I cannot give you the birth dates of all of them. I can give you the birth date of my boy. He is 13 years old. I know how old this boy is because he was born the same date and the same month I was. I do not know how many children the Towns have. I live near them but I don't visit with them now. My wife doesn't visit with them either. I don't know what year Bit and Buddy were born. I think that they were born in 1923. I think that it was the same year my children were born and they were born in 1923. I don't know how long they were born before my twins were born, but do know that it was in the same year. I know that my twins were born in 1923. I do not know the year of the birth of any other of my children, but I don't have but one boy and I kept up with him. I did not keep up with the births of any other of my children like my wife did. I know that the twin girls were born in 1923. I can not tell you when any other of my children were born.

On re-direct examination the witness testified: I do not have but one boy, and I remember his age. I do not have but one set of twins and have told what their ages are.

The witness was thereupon excused.

[fol. 56] REBY PETERSON, witness on behalf of the Government testified on direct examination as follows: My name is Reby Peterson, and my mother's and father's names are Mary Lizzie Peterson and William Peterson.

I am 22 years old. I was born in 1923. I have been knowing Bit and Buddy Towns ever since I started to school. I went to school at Sandy Ridge. I do not know how old I was when I started there. Bit and Buddy started to school when I started. I do not know whether they started the same year I started or not. They were not in the same class with me. I don't know whether they were in the class ahead or behind me. I caught up with them. I was promoted in the grade they were in. I do not know when I was promoted. After I was promoted in the grade they were in I stayed in the same class with them until they stopped. I don't know when they stopped, but don't think they went to school any more after that.

On cross-examination the witness testified that: I don't know how old I was when I went to school. I graduated from Sandy Ridge. I was 19 years old when I graduated from Sandy Ridge. I was 19 years old when I graduated. I graduated year before last. They were in the same grade when they stopped. I don't know whether they started the same time I did or not. I live close to them but don't know whether they started the same year I started or not.

Q. How do you know you are 22?
A. My mother says I was 22.
Q. Then you are saying what somebody told you?

I move to exclude that on the ground it is hearsay evidence.

Judge McDuffie: I overrule your objection. I don't know how anybody here can swear they were born on such a date. They have to learn from their people; of necessity it must come that way.

[fol. 57] Mr. Gayle: I agree with you that no child knows and that is the reason we could not give a birth certificate ourselves. We have to get proof of what our age is. That is the best evidence. The mere fact that someone tells you—my mother told me how old I was—that certainly would not be the best evidence. It would have to be proven by people older than I am who knew when I was born. Her testimony is merely hearsay of what someone has told her, namely, her mother. I think that testimony is objectionable on the ground that it is

absolutely hearsay evidence and the best evidence would be a birth certificate or a doctor's certificate.

Judge McDuffie: I overrule your objection. Note an exception.

The witness was thereupon excused.

Ruby Peterson, witness on behalf of the Government testified on direct examination as follows: My name is Ruby Peterson. I am a first cousin of Bit and Buddy Towns. I went to school at Sandy Ridge. I graduated from the tenth grade there. I have known Bit and Buddy Towns ever since I was large enough to know anybody. They went to school at Sandy Ridge, but were not in the same class with me when I first started to school. They were in a class ahead of me. I do not know how many classes ahead of me they were. I never did catch up with them. My sister never did catch up with them. I disremember if she did. I know John Towns and he is older than Bit and Buddy, but I do not know how much older. He was in school at the same time, but do not know whether he was ahead or behind Bit and Buddy.

On cross-examination the witness testified: I was six years old when I started to school. I do not know whether they were ahead of me, but do know that my sister and I never did catch up with them. I am positive of that.

[fol. 58] The witness was thereupon excused.

Sam Peterson, witness on behalf of the Government testified on direct examination as follows: I live at Sardis, Pleasant Hill. I know Carrie Towns, Walter Towns, Bit Towns, Buddy Towns and John Derry Towns. I am no kin to them. I have lived in that community practically all of my life. I have some children. I have one child named Fed. I know Mary Lizzie Peterson and her husband, William Peterson. William Peterson is my uncle. I know Reby and Ruby Peterson. I was living in that community at the time Reby and Ruby Peterson were born. I recollect the occasion. I was living in that community at the time Bit and Buddy Towns were born and recollect the occasion. They were born in 1923. I recollect when my boy Fed was born. He was born August 25th, 1923. At the time he was born Bit and Buddy

Towns were already born. Reby and Ruby were not born at the time my boy Fed was born. Bit and Buddy were born before my boy Fed was born. They were born the first of the year. Bit and Buddy were born first, then Fed, then Reby and Ruby. Fed's mother was Ida Farris.

Mr. McConnell: I offer in evidence certified copy of the birth certificate of Fed Peterson, whose father's name was Sam Peterson, and whose mother's name was Ida Farris.

Judge McDuffie: What is the purpose of that?

Mr. McConnell: To establish the birth date of Fed Peterson.

Judge McDuffie: His father has done that.

Mr. McConnell: That is true.

Judge McDuffie: He has told what part of the year the others were born. I don't see what particular service that can perform. I think it is sort of cumulative.

Mr. McConnell: That is true, but here is a record [fol. 59] made prior to the present occasion, prior to these delayed birth certificates.

Judge McDuffie: I will hear from Mr. Gayle.

Mr. Gayle: I object to that on the grounds heretofore stated—I have not read that one—I don't know whether it is a delayed one or not.

Judge McDuffie: Objection overruled.

Thereupon, certified copy of birth certificate of Fed Peterson was marked Plaintiff Exhibit No. 3.

On cross-examination the witness testified: I don't know how many children I have. I have a bunch of them. There is 10 in the house now. I cannot give you any birth date of any of them except Fed. He is the only one I remember. I don't remember any others. I can give you the birth day of some of the younger ones, but not the older ones. Fed is 22 years old. I don't know how old the next one to him is, my wife knows. I didn't keep up with them. I know how old Fed is because I had to get him ready for registering. I do not know how many children the Towns have. I do not know how many children William Peterson has. I do not know how old any of their children are.

The witness was thereupon excused.

FED PETERSON, witness on behalf of the Government testified on direct examination as follows: My name is Fed Peterson. I did register for the draft. I registered in 1942. I know Bit and Buddy Towns, and John Derry Towns. I do not know how old they are. I do not know whether John Derry Towns is older than the twins. I went to school at Sandy Ridge. I was seven years old when I started. Bit and Buddy and I started to school together. Bit and Buddy got ahead of me. They got a heap ahead of me. I don't know when they stopped, but I stopped in the fifth grade. I know Reby [fol. 60] and Ruby Peterson. I don't know whether they were ahead or behind me. I started to school the same year they did.

On cross-examination the witness testified: I have 25 sisters and brothers. I have two older than I am. The youngest child is about eight months old. I don't know how many children there are at home now. I do not know any of their birthdays. I don't know what year Reby and Ruby Peterson was born. I do not know anything about the year Bit and Buddy Towns were born. I do not know how old they were when they went to school. I was seven years old. Bit and Buddy and Reby and Ruby went to school the same year I did. I don't know any of the other children's ages in my family except mine.

The witness was thereupon excused.

REV. L. S. SUMMERVILLE, witness on behalf of the Government testified on direct examination as follows: I am a minister. I live near Pleasant Hill, Alabama, and have lived there around sixty years. I have been a minister for about twenty years. I know Carrie Towns and her husband, Walter Towns. I know Mary Lizzie Peterson and her husband, William Peterson. I know Fed Peterson and Sam Peterson. Sam Peterson is Fed Peterson's daddy. I know Bit and Buddy Towns. I know Reby and Ruby Peterson. I have got some children. I have got one named Arthur. Arthur is now in Detroit, Michigan. He was born July 9, 1920. He has been in the army. I know when Reby and Ruby Peterson were born, but I have no recollection of the date. I know when Bit and Buddy Towns were born, but I don't know

the day of the month or year. I do not know whether Bit and Buddy or Reby and Ruby were born first. I do not know how far apart those two sets of twins were born. To my best recollection my boy, Arthur, was about three years or four years old when Bit and Buddy were born. [fol. 61] On cross-examination the witness testified as follows: I have got ten children in the house now. I have all together, about fourteen, I reckon. The next one to Arthur is about seventeen years old. There is some difference between these children as they have got different mothers. The one before Arthur was born in 1902, one was born in 1904. I have ten children by my second marriage. My youngest child is about 1 year old, and the next one to the youngest is about two years old. I just don't keep up with their ages, I leave that for the madam. I am not positive about any of the ages, but Arthur's. I know his age because he had to go to war and I kept up with him. I told you that I knew his age as he had to go to war and I kept up with it. I had no other children in the armed services. The other two were too old, Arthur was just in the right age for war service. None of the others were.

The witness was thereupon excused.

General Fails, witness on behalf of the Government testified on direct examination as follows: My name is General Fails. I live at a little place called Polk, it is small place close to Pleasant Hill. It is a little closer to Tyler than Pleasant Hill. I was brought up at Pleasant Hill. I left Pleasant Hill in December or the first of January. I lived in Pleasant Hill from the date I was born except for a little public work in Jefferson County. I know the whole Towns family.

Q. Do you know the twins of Walter and Carrie Towns?
A. Yes, sir. I know the two boys they said were twins.

Mr. Gayle: We object to that—to what they said—and move to exclude it.

A. They always told me they were twins. I know them.

[fol. 62] Mr. McConnell: I think that is admissible testimony.

Judge McDuffie: I don't know.

Mr. McConnell: Suppose I ask him the question this way? Do you know the two boys of Carrie Towns that are referred to as twins? He could answer that question as to whether he knew those particular boys. It is simply a matter of identity.

Judge McDuffie: Q. You didn't ask him whether they were twins or not?

Mr. McConnell: No sir. I am not trying to prove they are twins. I just want to identify the two boys I am talking about.

Mr. Gayle: It is purely hearsay evidence and is not admissible. He does not know whether they are twins.

Judge McDuffie: He was not asked whether they were twins.

Mr. Gayle: I say that is purely hearsay.

Judge McDuffie: I overrule your objection. An exception will be noted.

I know Bit and Buddy Towns, and I know Reby and Ruby Peterson. I do not know when Reby and Ruby were born. I was living at Pleasant Hill at that time. I remember seeing these children but just what time I didn't make any record and my memory is a little bit too dim in fifteen or twenty years back. I do not remember the date but remember when it happened. I have got a boy by the name of Robert. I remember when he was born. He was born September 21, 1923, and that makes him 22 years old September 21st gone. At the time my boy Robert was born, Bit and Buddy had already been born, if my memory is good, probably so, somewhere around there, it seems to me. My memory being sort of a fading flower, it seems to me like it might be possible. I am not definite about it, but to my best recollection Bit and Buddy were born about [fol. 63] the same time my boy was born. It seems to me that Reby and Ruby were born about the same time my boy was born. It seems that they were a little afterwards, but I am not sure.

On cross-examination the witness testified: I have seven living children. Robert is the oldest. The next one below him is 20 years old. Her name is Carrie Pearl. The next one is a boy and he is 18 years old. He registered when he was 18. I do not know the exact date. I don't remember the dates of any other of my children. I have a record of them in the family bible. That is the record I go by when

I say Robert was born September 21st, 1923. I had that bible only a short time when I put his name in it. I had the bible before he was born.

ALICE FAILE, witness on behalf of the Government testified as follows on direct examination: I am the wife of General Faile. I have a boy by the name of Robert born September 21, 1923. I know Reby and Ruby Peterson and Bit and Buddy Towns. I don't think I was living in that community when they were born. I don't remember when they were birthed. I heard about when they were born. At the time I heard about them I was told they were twins. I had already heard about Bit and Buddy being born at the time Robert was born. I do not know exactly how long.

On cross examination the witness testified as follows: It might have been six or seven months or it might have been less. I don't remember whether I was in the community at the time Bit and Buddy were born. I was in Kentucky about two years. I heard about them being born after I came back from Kentucky, just before my boy was born. I heard they had been born. My boy is around 22 years old. He was born 23rd day of September, if I am not mistaken. I cannot think exactly what date my next child was born. I got it put down in my bible at home. It is not exactly a bible. It is called Harps of God, one [fol. 64] of the new styled books, that is what it is. I had it around 27 years. I sot the ages down after we got the bible.

The witness was thereupon excused.

VALARE MOORE, witness on behalf of the Government on direct examination testified as follows: I am Secretary of the schools. I have the school records with me showing the registration of pupils in different classes from year to year in the various schools. I have the school record for the year beginning September 23, second grade, in 1933. I have the record for the fourth grade for the year which began in the fall of 1934. I have the record for the third and fourth grades for 1935. It is Clarke School. The books have been in my custody ever since they were made. They are in the same condition as they were when they were made.

On cross-examination the witness testified as follows: I have had custody and control of these books. They have been in the office all the time. The principal and teachers have access to those books and at times others have come and looked for birth certificates.

The witness was thereupon excused.

Louise Brown, witness on behalf of the Government testified on direct examination as follows: I am a school teacher and have been one for many years. I taught the second grade in Clarke School for the year 1933-34. I have the record of the second grade. I made that record. It was made by me at the time school began. It shows the names of the students who entered the second grade in September, 1933.

Q. Is that record made in your handwriting?

A. Yes, sir.

[fol. 65] Q. Made by you in September 1933, when that school year began?

A. It was.

Q. Was it accurately made?

Mr. Gayle: I object to that, may it please your Honor?

Judge McDuffie: What grounds?

Mr. Gayle: The books are the best evidence, not her conclusion that they were accurately made.

Mr. McConnell: How can a book show that it was accurately made?

Judge McDuffie: The book shows on its face what it is. I think if she knows the book was accurately made, she can say so. I overrule your objection.

Mr. Gayle: I except.

Q. (Mr. McConnell) Will you answer the question? Was that record accurately made?

Mr. Gayle: Same objection.

Judge McDuffie: Overruled. Note an exception.

To my best knowledge, it was accurately made.

Q. Does it show that Sammy B. Towns and Samuel C. Towns were in the second grade that year?

A. It does.

On cross-examination the witness testified as follows: It shows the ages of them for the year 1933-34. They were

born the 6th month, the 9th day of 1925, according to the information given.

The witness was thereupon excused.

Bessie B. Drewery, witness on behalf of the Government testified on direct examination as follows: I am a school teacher and have been teaching school for about 14 years. I taught the fourth grade at Clarke School for the year [fol. 66] which began in the fall of 1934. I do recognize those books for what they are. That is the school registration book that covers my fourth grade in the year beginning in the fall of 1934. I have found my class register for that particular class, and it was made in my own handwriting. The record I found was put in the back around the 19th of the month, we put it in when the six weeks closes, that is when I started this book.

Q. Was that record correctly and accurately made by you?

Mr. Gayle: We object on the same grounds.

Judge McDuffie: Overruled. Exception.

A. Yes.

It only shows a boy by the name of John Towns. It shows his mother as Mrs. C. Towns, but does not show who the father is. It does not show any address other than 708 Lawrence Street.

On cross-examination the witness testified as follows: It shows that John Towns was registered in 1934. It shows that he was 12 years old in the fourth grade, living in the City of Selma.

The witness was thereupon excused.

Corsetta Boyd, witness on behalf of the Government testified on direct examination as follows: I am a school teacher and have been so since 1920. I taught the third grade at Clarke School for the year which began in September, 1935.

Q. Is that record made by you?

A. Yes, sir.

Q. In your handwriting?

A. Yes, sir.

Q. Is that correctly and accurately made?

[fol. 67] Mr. Gayle: I object to that.

Judge McDuffie: I think it is up to the other side to find whether it was accurately made, if it can be developed on cross-examination that she didn't make it properly.

The record shows that Sammy B. Towns and Samuel C. Towns were in the third grade. It shows that their mother's name was Carrie Towns. It shows that they lived across the river, and that Pleasant Hill is across the river. I do not remember the boys. I do not remember having them, but according to the records they were.

On cross-examination the witness testified: The records show that Sammy B. Towns was born the second month, the 14th day of 1924, and that Samuel C. Towns, was born the second month, the 14th day of 1924. The children bring in that record.

Corinne Webb, witness on behalf of the Government testified on direct examination as follows: I have been a school teacher for many years. I taught the fourth grade in Clarke School in 1935. The record is in my handwriting. The record shows that I have John Towns in that grade. It shows that his parents as Carrie Towns and that his address is 710 Lawrence Street.

On cross-examination the witness testified as follows: It shows that John Towns was 12½ years old in 1935.

On re-direct examination the witness testified as follows: I do not remember him it has been about eleven years.

Mr. McConnell: If the Court please, that completes one phase of the evidence for the Government. I would like to confer with Mr. Tully and see if we cannot eliminate some.

[fol. 68] Judge McDuffie: I understand that some jurors are going home tonight and will come back in the morning. I don't want to keep you too long so that you miss your means of transportation. We usually work until dark. That is what I call first dusk. If you gentlemen prefer I am willing to let you go until morning. I want to meet your convenience as much as possible. What are your wishes? Do any of you gentlemen care to express yourselves about when you would like to quit.

Juror: I would like very much to quit now. I have transportation at 5:00 o'clock. I don't know how long they will wait for me.

Judge McDuffie: Where do you have to go?

Juror: To Demopolis.

Judge McDuffie: Do you have a way to go?

Juror: Yes, sir.

Judge McDuffie: We will take a recess until 9:30 o'clock tomorrow morning. I am not going to keep you together. You will have to stay together when we get through, but now you need not eat together or sleep together. Be very careful about any discussion of this case, and be here at 9:30 o'clock tomorrow morning.

Thereupon, court recessed at 5:10 o'clock P. M. November 7th, 1945.

At 9:30 A. M. November 8th, 1945, the proceedings were resumed.

Judge McDuffie: Now, gentlemen, are you ready to proceed?

Mr. McConnell: Yes, sir.

Judge McDuffie: All right, call the next witness.

Mr. McConnell: Call Miss Nelson, Clerk of Local Board No. 1.

Mr. Stanley Fountain, Deputy Marshall: She has not shown up.

[fol. 69] Mr. McConnell: In that case, call Miss Veach, Clerk of Local Board No. 2.

Judge McDuffie: I thought you gentlemen might agree that these boys did not register and we could save a lot of time. I don't see any need of taking the time to show that they did not register. Why they did not register is another question.

Mr. Gayle: I am not questioning the fact that they did not register. I have not questioned that fact.

Judge McDuffie: It is agreed then that they did not register. You can eliminate that part of the evidence.

Mr. McConnell: We can eliminate testimony of Miss Nelson, Clerk of Local Board No. 1, provided it is agreed that Local Board No. 1 has jurisdiction over persons within the jurisdiction of Selma?

Mr. Gayle: I will not agree to that. Local Board No. 2 is their board. Local Board No. 1 had no jurisdiction over them.

Mr. McConnell: There is some possible doubt as to that. In view of that doubt, the indictment contains a

count alleging that while these boys were actually in the City of Selma on a certain date they were then required to register at Local Board No. 1 which had jurisdiction over persons in Selma.

Judge McDuffie: If a man leaves his home place, it is his duty to go to the nearest board and register.

Mr. McConnell: I had better put Miss Nelson on the stand.

Judge McDuffie: There is no doubt about the boys not registering at either board.

Ruth Veach, witness on behalf of the Government testified on direct examination as follows: My name is Ruth Veach. I am clerk of Local Board No. 2 of Dallas County, Alabama, located in the City of Selma, Alabama. I have been clerk of that Board for some time. I have been clerk since November, 1944. I was Assistant Clerk from March 1943 to that time. This board has jurisdic-[fol. 70] tion over the territory around Pleasant Hill and Berlin. My board has three registrants whose names are Samuel C. Towns, Sammy B. Towns and John Derry Towns. They registered April 18, 1945 in Tallahassee, Florida at a special panel board. I have registration cards on these three boys. I have had a file on these three registrants for some time prior to the time I received these registration cards. The first letter that left our office was on March 21st, 1944, and it was addressed to J. D. Towns, Route 1, Berlin, Alabama, in care of Walter Towns. This letter never came back. I had our return address on it. It has never been returned to our office. I have a copy of this letter. I wrote the letter myself and Mr. L. L. Perrin signed the letter.

Mr. Gayle: I would like to ask one question. Did you mail that letter yourself?

A. Yes. I mailed all the letters from Local Board No. 2 each day.

Mr. Gayle: Do you remember this particular letter?

A. All mail that leave our office is mailed at 5:30.

Mr. Gayle: You say that you mailed that letter, and your only reason for saying that is that you mailed all the letters?

Judge McDuffie: What you are interested in is whether or not your client was connected with the failure of these

people—the question of whether he played any part in it. It seems to me that you are consuming time unnecessarily. So let the record show the Court made that remark. We are here to try cases and we will stay on if it takes until Christmas, but it seems to me that you are consuming time unnecessarily.

Mr. Gayle: I realize your Honor's position. I want to be understood that all I am trying to do in this case is to protect the interests of my client.

Judge McDuffie: I cannot see how this question [fol. 71] can hurt your client at all. Proceed with the witness, please.

Mr. Gayle: Q. You just mailed them every week, and that letter was in there?

A. What I said was that I mailed them every day.

The letter said report to this office at Local Board No. 2 Water Street, Selma, Alabama, and bring this letter with you. Do this without delay. Some report had been made to the Board prior to the writing of this letter concerning these three Towns boys. J. D. Towns did not come to the local board in answer to that letter. Walter Towns and Carrie Lee Towns came in on March 23, 1944. The letter was written on March 21, 1944. They did not bring with them at that time the birth certificate of the three boys. I did not talk with them at that time nor did I hear their conversation. On May 5, 1944 another letter was written to Walter Towns. It was mailed to him at his address in Pleasant Hill and bore the return address. It was not returned undelivered. The contents of that letter were "this is a notice for you to have your three sons come to this office, Local Board No. 2, Saturday, May 13, 1944." No one reported except Walter Towns and Carrie Lee Towns, and they came on the 10th. They did not bring the boys. At that time they had certified copy of birth certificates with them. The three birth certificates that you have are the three certified birth certificates they had with them at that time.

Mr. McConnell: I now offer in evidence birth certificate of Samuel C. Towns, birth certificate of Sammy B. Towns and birth certificate of John Towns, respectively, and ask that they be marked Exhibits 4, 5, and 6 respectively. Thereupon, birth certificates of Samuel C. Towns was marked Plaintiff Exhibit 4, birth certificate of Sammy B. Towns

was marked Plaintiff Exhibit 5; birth certificate of John Towns was marked Plaintiff Exhibit 6.

[fol. 72] Carrie Lee Towns brought the certificates in and stated these were the ages of her children as indicated on the birth certificates, and that they were to young to register. I told her at that time if there was anything else the board wanted to know from her that we would contact her again by mail. The board would not accept the birth certificates and we wrote a letter to Walter Towns on May 13th which was properly addressed and bore our return address. The letter was not returned undelivered. The contents of this letter was "This Board wrote you to come before the Local Board at their meeting, Saturday, the 13th day of May, and you came before that time. You are to come before the board Wednesday, the 17th, at 2:30 P. M. and bring all three boys with you. Do this without fail." They did not respond to this letter. We wrote them another letter on May 23rd, which was not returned or undelivered. This letter was written to Walter Towns, and bore the same address. This letter read "this is a final notice for the three boys to come before this board, Saturday, May 27th. Do not come any day except Saturday, May 27th, but don't let anything interfere with this." There was no response to that letter. The board then had subpoenas served on them by the Sheriff of Dallas County, Alabama. The subpoenas were served on Walter, Carrie Lee, John Derry, Sammy B. and Samuel C. Towns.

> A. You are hereby commanded to appear as a witness before the above named Local Board No. 2, Selma, Alabama, on the 3rd day of June, 1944, at 10:00 A. M. for the purpose of giving testimony in the case of John, Sammy B. and Samuel C. Towns. This was written to Walter. We have one written to each one. You are hereby directed to bring with you the following papers or records: any records concerning the age of children. Signed, S. H. Kendall.

They responded to the subpoenas on the 3rd of June. [fol. 73] Carrie Lee and Walter Towns came in but the boys did not come. When they came they had only the same certified birth certificates. When they appeared before the board they had the same birth certificates of

John Towns, Sammy B. Towns and Samuel C. Towns. On that occasion Walter and Carrie Lee and her son, Private W. T. Towns were present with the following board members, S. H. Kendall, W. H. King, and Mr. Stoudenmire. Carrie Lee testified and produced birth certificates for John Towns, Sammy B. Towns and Samuel C. Towns. These certificates were issued in Montgomery, Alabama on information submitted by C. J. Adams, colored Notary Public, Selma, Alabama. Carrie Lee Towns stated that the ages of Sammy B. Towns, and Samuel C. Towns, twins, born June 9, 1930, and John Towns was born October 9th 1928. The information given C. J. Adams was taken from the record in the bible kept by Carrie Lee. The age from the baptismal record was given by Carrie Lee. After the three boys failed to report today, this board told Carrie Lee and Walter to report June 10, 1944 and bring all three boys for questioning. They came one time before June 10th, Carrie Lee and Walter and her son and Mr. Robinson, her attorney, from Birmingham, came June 7th. The son's name that was with them was Pvt. W. T. Towns. Mr. Robinson was an attorney out of Birmingham. When they came I was the only one there. I gave Mr. Robinson the address of Mr. Kendall. Walter, Carrie Lee, Sammy B. and Samuel C. Towns and John Towns came on the 10th. That was the first time that the three boys were present. At that time there was present all of the board members, Mr. Kendall, Mr. King, Mr. Stoudenmire and myself. They had the birth certificates with them. I have a memorandum on what was said and done on June 10th and will read it to you. "The names of Carrie Lee's children were asked and she listed them as I have them here. She listed these as being her children from the oldest on down; Walter Lee Towns, William Lee [fol. 74] Towns—Alberta Towns came ahead of William Lee—Lula B. Towns, Mall Towns, Miller Towns, W. T. Towns, Frances Towns, John Towns, Sammy B. Towns, Samuel C. Towns—she states that two children between Frances and John are dead. She did not have the bible with her on that occasion. She stated that John was born October 9th, 1928, and the twins were born June 9th, 1930. She stated that the ages of her children are written in the bible on the day of their birth. She stated that the children Sammy B. and Samuel C. were baptised in 1940 and

their ages in this baptismal record given by her. I do not know the ages of my sister's twins. My children never played with any other children in the neighborhood, and all I know is about my own family. I paid 50¢ for each of these birth certificates. I have not paid C. J. Adams another cent, but will do so if he says so. Walter had nothing to say nor did either of the three boys. The board asked the boys how old they were and they said that they were the age their mother told them. It was made known to them and also their mother that any boy failing to register or evading the draft was subject to punishment by the Federal Court under the selective service law." I had made investigations at the County Health Board as to the birth certificates of these three boys. I checked with the dates of the years that Carrie gave me and found no boys born to Carrie Lee and Walter Towns on those dates. We then checked on the date of June 9th, 1923 and we found the record of the birth of these twins to Carrie Lee and Walter Towns on that date, but found nothing on John Towns.

Q. Did you obtain from the County Health Department at Selma a verification of the birth record covering the twins?

A. Yes.

Q. I will ask you to examine these two certificates and state whether these are the verification you then and there obtained.

A. Yes, sir.

[fol. 75] Mr. McConnell: I now offer in evidence the verification of the birth identified by the witness as that she obtained under the circumstances testified about, covering Isaac Towns and Isham Towns, who are shown to be born on June 9th, 1923, the father's name is Walter Towns, and the mother's name is Carrie Lee Towns.

Mr. Gayle: We object to that.

Judge McDuffie: That is the same proposition we had the other day. I overrule your objection and give you an exception.

Thereupon, verification of birth record of Isaac Towns was marked Plaintiff Exhibit 7 and verification of birth record of Isham Towns was marked Plaintiff Exhibit 8.

The witness was thereupon excused.

ETHEL HAWLEY, witness on behalf of the Government testified on direct examination as follows: My name is Ethel Hawley. I am Acting State Registrar of the State of Alabama. Birth certificates are filed in this office for children born in the State. The volumes are filed and bound permanently. Births have been recorded in the Central Office in Alabama, since 1908. The early records were handled through the county health officers. Since 1919 there have been local registers in the different voting precincts and the certificates go from there to the county health department, and then, between the 10th and 15th of the following month, they are all sent to the state department. Some of the county boards keep a record of the information on the birth certificates and some of them make a copy and some make a summary card showing the information. The original is always sent to Montgomery. I am the custodian of these records. A birth certificate is filed shortly after the birth of a child. A delayed certificate is one where their birth occurred before records were required to be filed or the doctor or [fol. 76] midwife failed to report the birth at the time the birth occurred. We search the records for the original birth certificate for the year before, the year given and the year following to see if there is a record and if we do not find any we allow a delayed birth certificate to be filed.

Q. As an illustration, if I told your department I was born in 1930 and wanted to file a delayed birth certificate, you would look in 1930, 1929 and 1931?

A. Yes, sir.

Q. If, as a matter of fact, I had been born in 1923, but represented to you that I was born in 1930, you would not go back to find out if I had a birth certificate in 1923?

A. No, sir.

A delayed birth certificate provides for an affidavit by one who files it, also an affidavit by some relative and it also requires some supporting documents. We do accept a certificate by one who has examined an old and ancient bible and a certificate of the custodian of baptismal records, and other documents of that sort are permissible. This particular form has been used since 1942, I believe, but we have been requiring supporting evidence

other than affidavits on the delayed birth certificates prior to that particular form, but that has been used since the early part of 1924.

Thereupon, form of delayed certificate of birth was marked Plaintiff Exhibit 9.

Mr. McConnell: I hand you Plaintiff Exhibits Nos. 4, 5, and 6 and ask you to examine them please and state whether or not these are birth certificates or certified copies thereof issued by your office, covering Samuel C., Sammy B. and John Towns?

A. They are.

[fol. 77] Samuel C. Towns' certificate was accepted for filing on March 28th, 1944, and Sammy B. Towns' certificate was accepted for filing on March 28th, 1944. John Towns's certificate was accepted for filing on March 28th, 1944. I issued certified copies on March 28th, 1944. I issue delayed birth certificates on request with the fee of fifty cents.

Q. Does each of those certificates show what each of the supporting documents were in each case?

A. Yes.

For Samuel C. Towns, bible record in the possession of Carrie Lee Towns, notarized by C. J. Adams, notary public, and baptismal record of Good Hope Church, Pleasant Hill, Alabama, signed by Cleveland McBride, custodian of records, and the record was made August 29th, 1940. There were the same records in regard to Sammy B. Towns and the same in regard to John Towns, except that the baptismal record on his was September 20, 1941. The three pieces of paper you hand me show that on one side a bible record of Sammy B. Towns, giving the date of birth as June 9, 1930, and etc. They are the original supporting documents to each one of these three birth records. They are the records in Montgomery. One relates to Sammy B. Towns, one to Samuel C. Towns and one to John Towns.

Mr. McConnell: I now offer these in evidence and ask that they be marked as Plaintiff Exhibits. Thereupon, supporting document for Sammy B. Towns was marked Plaintiff Exhibit 10, supporting document for Samuel C. Towns was marked Plaintiff Exhibit 11; and supporting

document for John Towns was marked Plaintiff Exhibit No. 12.

I examined the records at the request of the government agent for the year 1923, looking for birth records of a set of twins born to Carrie Lee Smiley and Walter [fol. 78] Towns in Dallas County, Alabama. I had the records in my office in Montgomery, covering the births.

Q. I hand you two documents and ask if they are certified copies of the records you located at that time?
A. They are.

Mr. McConnell: I now offer in evidence these two documents.

Mr. Gayle: I object to those on the same grounds that I offered to the introduction of the certificates for Isaac Towns and Isham Towns.

Judge McDuffie: The record will show objection is made and the objection is overruled. Note an exception.

Thereupon, certified copy of certificate of birth of Isaac Towns was marked Plaintiff Exhibit 13, and certified copy of certificate of birth of Isham Towns was marked Plaintiff Exhibit 14.

I personally made a search of the record of the Towns twins in March, 1945.

On cross-examination the witness testified as follows: The law was passed in 1908 requiring birth certificates. It was most lack and incomplete in the earlier years but has improved in recent years. The name on the certificate is Isaac Towns and not Sammy B. Towns. The other name is Isham Towns and not Samuel C. Towns. Of my own knowledge, I do know that they are twins born to these people.

The witness was thereupon excused.

Mr. McConnell: If the court please, I would like at this time to read to the jury the birth certificates that we have referred to. This is a certified copy of the delayed birth [fol. 79] certificate of Samuel C. Towns, presented by the mother and father to the local board. This shows the name of Samuel C. Towns, place of birth Pleasant Hill, Dallas County, Alabama, date of birth June 9, 1930, father's name Walter Towns, mother's name Carrie Lee Smiley.

Judge McDuffie: That was sworn to before the defendnt at the bar?

Mr. McConnell: Yes, sir. We have herein evidence arked as exhibits the original supporting documents, hich were filed with those respective dates. On one side has a baptismal record. Here is the one for Sammy B. owns. "State of Alabama, County of Dallas. This is to ertify that I have this day examined the records of Good lope Church located at or near Pleasant Hill, Alabama, hich shows Sammy B. Towns was baptized August 29, 940 and was 10 years of age at that time. The record nows place of birth to have been Pleasant Hill, Alabama; ate of birth June 9, 1930, name of father Walter Towns, nd name of mother, Carrie Towns. Done this 24th day f March, 1944. Cleveland McBride, Custodian of Church ecords." I now have the one for Samuel C. Towns. he information with reference to him is on the same ort of form and is signed the same date. This one overs John Towns.

I want to call Miss Hawley back for one more question.

Miss Hawley being recalled, testified as follows:

Mr. McConnell: Miss Hawley, I want you to examine ese three documents identified as Exhibits 11, 12 and , the same being the original supporting documents that ou just testified to, and tell me whether or not your office rnished or furnishes the forms, such as those supportg documents are filled out upon?

A. We do not.

On cross-examination the witness testified: They [Vol. 80] were some forms the notary public had made up mself. They are the correct forms but are just copies.

The witness was thereupon excused.

Cleveland McBride, witness on behalf of the Governent testified on direct examination as follows: I am stodian of the church records of the Good Hope Church cated at Pleasant Hill, Alabama. I have with me the ptismal records of the persons who were baptized at y church on August 29th, 1940 and on September 20, 41.

Q. Do those records show whether or not on those

dates Samuel C. Towns was baptized, Samuel B. Towns was baptized and that John Towns was baptized?

A. The record only shows where they turn it into the record. The record only carries the name of the month when they were baptized. It don't altogether carry the month. It mostly carries the name.

Q. Does your record carry the name of John Towns baptized on September 20, 1941?

A. I come in possession of the books in 1940. I found their names already in the record.

Mr. Gayle: I object if he didn't put them in himself.

Judge McDuffie: Overruled. Exception.

The record doesn't show that Sammy B. Towns was baptized on August 1940 and that he was 10 years old and it does not show that he was born in Pleasant Hill, June 9, 1930, and that his father was Walter Towns and that his mother was Carrie Lee Towns. The record doesn't carry the ages or the birth dates. I have no record like that. That is my signature to Government's Exhibit 12, 10 and 11. It was untrue about Sammy B. Towns, Samuel C. Towns and John Towns being born on such dates. The [fol. 81] mother came to me with those certificates and she told me to sit down, she didn't need any record, she had everything, and I just put down what she said. I actually filled in the forms myself. There was nothing written on the backs at the time I did that.

On cross-examination the witness testified as follows: I certified to the certificates, but the mother was the one who made them out. The records did not show what the certificates did.

The witness was thereupon excused.

Harry Davis, witness on behalf of the Government testified on direct examination as follows: My occupation for the year 1944 and the first part of 1945 was Special Agent for the F. B. I. I am now executive secretary of the Auburn Alumni Association. I resigned from the F. B. I. July 28th, this year. I participated in the effort to have the three Towns boys register and thereafter in the investigation relative to the alleged offenses committed by them and others in and about their failure to register. I went to the home of Walter and Carrie Lee Towns in and

bout that effort and investigation. I first went there eptember 14, 1944. At that time I saw Carrie Lee and Valter Towns and the three boys, Sammy B., Samuel C. nd John Towns. I talked with all of them at that time elative to that Matter. I explained to them that it had een reported to the F. B. I. that they had not registered or the draft and that they were over eighteen. I explained hat it was necessary for any male to register who had eached his eighteenth birthday. At that time they were ll gathered together there. They have a little store in ront of the house. I also explained to them the serious- ess of the offense in case they didn't register and were ver eighteen. They all insisted that the boys were not ighteen and that their birth records were listed in a bible. didn't see the bible at that time. I told them to think fol. 82] the matter over and that I would be back later. ly suggestion to them was to make sure what their ages ere, and if they were over eighteen they had better egister. I went back again on September 19th, and asked see the bible. All five of them were there, Carrie Lee, Valter, Sammy B., Samuel C. and John Towns. On both ecasions I took the chief deputy sheriff, McCain, with me. t that time they produced the bible in which the birth ecords were entered. They turned the bible over to me, nd I gave them a receipt for the bible and also gave them listing of the names of their children and their dates of rth as so taken from the bible. Carrie Lee requested that give her the list as that was the only record she had of e births of her children, and, therefore, she wanted that st; if I took the bible, she would not have any record. he said that that was the only bible she had. I talked ith her about the bible she took to C. J. Adams, and she ated that this bible was the one she had taken to him. was the same bible that was introduced in evidence here the occasion of another trial.

Q. If the court please, I want to withdraw this witness r a moment, and put the clerk on the stand, and identify e bible before I ask him any further questions about it. ay I do that, please?

Judge McDuffie: I don't think there will be any ques- on about it.

Mr. Gayle agreed that it was the bible used in the former ial.

HARRY DAVIS, recalled testified as follows: That is the bible I just referred to. I sent it to the F. B. I. laboratory at Washington. Thereafter it came into my possession and it was in the same condition as when it was sent off. It is now in the same condition as it was when I got it from Carrie. I have not made any changes in it since the last hearing.

Mr. McConnell: I now offer this bible in evidence, if the court please.

[fol. 83] Thereupon, said bible was marked Plaintiff Exhibit No. 15.

On cross-examination the witness testified as follows:

Q. At the time of this investigation at the prior trial, the trial that was prior to this, and when you spoke of introducing the bible, did you at that time have all the information relative to the Towns cases and the present cases that are now before this Court?

A. I am sorry, but I don't understand your question.

Q. I mean at the time of the trial of the former Towns cases, I believe you identified that as being the bible, at that time did you have all of the information that you have at this time in regard to this present trial? Did you have the same information or have you gotten additional information?

Mr. McConnell: I object, as calling for incompetent, immaterial and irrelevant testimony, and it calls for the conclusion of this witness.

Judge McDuffie: I overrule your objection.

A. Well, if I understand your question, you want to know if since the last trial have I conducted any further investigation?

Judge McDuffie: That is the substance of that question, as the court understands it.

A. Yes, I conducted some subsequent investigation.

Q. Did that subsequent investigation give you any further evidence other than what you had prior to this trial?

Mr. McConnell: I object to that as calling for the conclusion of this witness.

[fol. 84] Judge McDuffie: I think it does. I don't know, Mr. McConnell. This man is an expert. He knows what

evidence is, yet, the court passes on what is evidence. I think you are right.

Mr. Gayle: May I be heard a minute? If you recall, there was a motion in this case, which, I believe was heard in Mobile. At that time, there was a question as to whether this information was known to them. They used Adams in the last trial as a United States witness.

Mr. McConnell: There was a motion all right, but there was no question so far as I know, as to any further investigation or the development of any further information.

Judge McDuffie: I am going to let him answer the question.

Q. (Mr. Gayle continuing) You said you conducted an additional investigation?

A. Yes, sir.

Q. Tell the court and the jury the evidence you found, if any, in your additional investigation?

A. Well, the only investigation that I recall conducting was questioning C. J. Adams.

Q. Questioning C. J. Adams.

A. Yes.

Q. That is all you say?

A. Yes.

Q. You did not have his testimony prior to that time?

A. I had not talked with him prior to that time.

Q. Do you know whether he had been used in the former case as a witness for the United States government?

A. Yes, he was used at that time.

Q. He testified at that time, did he not?

A. Yes, sir, that is correct.

On re-direct examination the witness testified as follows: [fol. 85] Q. I will ask you whether or not any investigation with reference to the occupation of C. J. Adams was made subsequent to the last trial?

Mr. Gayle: I object.

Mr. McConnell: He brought that up. I objected to it. I think I have the right to show what investigation was made, if he showed it in part.

Mr. Gayle: That is absolutely irrelevant. His character has never been placed in evidence. It cannot be until he takes the stand.

Judge McDuffie: As far as his reputation in the com-

munity is concerned you cannot attack that until he takes the stand as a witness.

Mr. McConnell: I grant that, and made no effort to ask for this particular question until the gentlemen for the defense, over my objection, asked what investigation he made subsequent to the last trial. I have simply asked him the question—it does not make a great deal of difference and I would rather not make an issue of it.

The witness was thereupon excused.

Dr. L. T. Lee, witness on behalf of the Government testified on direct examination as follows: I am county health officer. I have been so for 24 years. I know C. J. Adams and have known him for about three years.

Q. Do you know the frequency or lack of frequency with which Adams has been to your office in connection with birth certificates in the last three years?

Mr. Gayle: I object.

Judge McDuffie: Upon what grounds?

Mr. Gayle: It calls for incompetent, irrelevant and immaterial testimony. As to the number of times or lack [fol. 86] of times he has been to Dr. Lee's office. I cannot see where that would be any evidence in this case whatsoever. Dr. Lee stated he was the county health officer. Whether Adams went to his office once or a dozen times would be immaterial as to any issues in this case.

Mr. McConnell: This defendant protests that he did not know what was going on. He says he simply acted as a notary public. I seek to show that he is thoroughly familiar with the set up of recording birth dates and the system of delayed birth certificates. I think it is highly relevant in view of what he says.

Judge McDuffie: You have here a conspiracy charge. Conspiracy is sort of like a dragnet. Any conduct touching upon an understanding on the part of the defendant, involving the act which we call an overt act, anything said by him even his movements, going here and there, even the fact that he is standing on a corner talking to somebody, all those matters can be gone into. I overrule the objection. You may have an exception.

I could not answer as to the frequency of his visits because he had the opportunity to visit the office when I was not there. I will make the statement of fact—

Mr. Gayle: I object to any voluntary statement.

Judge McDuffie: I overrule the objection. Exception noted.

Mr. McConnell: By the way, no one can object to a voluntary statement except the one who has asked the question.

He has been in my office, within my knowledge, and has obtained birth certificates, death certificates, obtained printed forms of death certificates and in my judgment he is thoroughly familiar with the making up of birth and death certificates and all the information pertaining thereto.

Judge McDuffie: I don't know about his being thorough-
[fol. 87] ly familiar—that is the conclusion of this witness. From the fact that he has been there frequently the jury may determine whether he has been thoroughly familiar.

Mr. McConnell: I have no objection to striking that from the record.

To my knowledge, I know within the last year I know of three or four times he has been in the office because I talked with him. That is the only actual contacts I had with Charlie Adams in the last year.

The witness was thereupon excused.

SAMUEL C. TOWNS, witness on behalf of the Government testified on direct examination as follows:

Judge McDuffie: I certainly do. Sam, nobody has to testify against himself, and any questions asked of you which might involve you and might indicate that you are a party to a crime, you do not have to answer. Nobody has to tell on himself. It is the duty of the government to prove a man is wrong. It is a constitutional right and if any question that is asked might bring into play your right, as I have stated, you do not have to answer such a question. Do you want to proceed now?

I am Samuel C. Towns.

Q. Samuel C. did you go before a notary public and make an oath as to your birth date for the purpose of filing a delayed birth certificate during the month of March, 1944.

Judge McDuffie: Now, Mr. McConnell, this boy is serving time now for this very thing. That is he was convicted. Whether the jury was right or wrong it is not for us to say now. He was convicted and sen- [fol. 88] tenced for his part, in effect, for his failure to register, being eligible. I wonder, having been so convicted, whether or not he could now be made a party or even a defendant for the same thing for which he has been convicted.

Mr. McConnell: He cannot be again indicted and tried for the same thing for which he was convicted, but the conviction of a substantive offense is not a bar to conviction for conspiracy. I believe that to be correct.

Mr. Tully: That is based upon the same theory on which you charge substantive offenses in the same indictment.

Judge McDuffie: A man might be indicted for conspiracy to violate the internal revenue laws. The agreement to do wrong is a crime of itself. Then, he could also be convicted for possession of illegal liquor or possession of a still, in addition to conviction for conspiracy to operate the still.

Mr. Tully: We have often had that same situation, where people have been indicted for substantive offenses, then they are followed up by a general conspiracy indictment. There have been cases prosecuted in this district.

Judge McDuffie: The question is how far this court should let this witness go or whether the court should let this witness answer, if on his answer, he could be indicted for conspiracy.

Mr. McConnell: The Court is called on, I believe, to state to this witness whether or not the answer to the question asked might tend to incriminate him. If he still elects to testify, he may do so.

Judge McDuffie: Yes.

Mr. Gayle: May I say this? Do you think he would know what was incriminating to him under the law?

Judge McDuffie: I think he is rather intelligent.

Mr. Gayle: I mean from a legal standpoint.

Judge McDuffie: Intelligent negroes understand the law. [fol. 89] I don't think he is unintelligent. I don't mean he is a good lawyer. A lot of people might not understand the technical basis of the law and yet know what

it would mean to violate the law. Now, Sam, if in the future, it were presented to a grand jury, and nobody knows whether it will be or not, you could be charged with aiding, abetting and becoming a party to conduct by your mother and your father in an effort to keep you out of the army. Now, do you want to go on and tell what you know what happened. You have a right to do it, if you are willing to waive that immunity which I have just talked about, if you are willing to go ahead, regardless of what might happen, you may do so. If you prefer not to do so, lest you make a statement that could be used against you, in that event you don't have to answer any questions. Now, what do you think about it?

A. There is one thing I would like to say. We were not trying to dodge the draft.

Judge McDuffie: I remember you said that before and the jury thought probably your mother was the main spring and didn't want her boys to go. The question is whether you helped your mother in avoiding going into the service, or whether you did not. You probably did what your mother told you to do. If you did so, you ought not to be troubled at all. I don't want you to incriminate yourself. You have been convicted for not registering, and you claimed you were not old enough to register, and that your twin brother was not, and your brother John was not. I believe they said you were fifteen when we were here before, last spring, or something like that, that you were born in 1930. Well, the jury didn't believe that, and the jury found you guilty for not registering, and following that the grand jury came along and indicted your mother and father for helping you to keep out of the army or keeping you out of the army and working with others to bring that about. That is what this case is about, against Adams; [fol. 90] your mother and your father's case is settled for that matter. It is a question now what part Adams played. Your mother and father are not being tried, nor are you being tried, but you could be tried if the grand jury indicted you for the part you played in trying to cooperate and bring about what the government calls a violation of the law. There is no question of whether you tried to keep out or not. That was all explained

to the other jury. They may have been wrong in convicting you. I am trying to get to your mind this: You may not be as intelligent as I thought you were: You don't have to testify to anything that might make you a party to something that was wrong. Do you understand that?

A. Yes, sir.

Judge McDuffie: You can testify if you wish, but you don't have to. You can say whatever you like, with reference to the questions that might be propounded to you, but you don't have to testify.

A. Judge, your Honor. I would like to ask you to help us get in the army as quick as we can get an examination.

Judge McDuffie: You boys probably are going to be taken into the army. The reason you have not is because you were held as a witness in this case. You will be processed into the army and your case will be terminated and after you serve six months after the war is technically ended, you will be out. I think that is the way it is. Is that all you want to say? You don't want to answer any questions about what you swore to, or what Adams did, or anybody else?

A. No, sir.

Mr. McConnell: I want to ask him a question here that won't incriminate him. Sammy you, of course, know your brother Sammy B. and your brother John Derry, do you not?

A. Yes, sir.

[fol. 91] Q. I want you to state, please where your brother, Sammy B. and John Derry Towns, lived from the first of January, 1942 up to the tenth of February, 1945? Where did they live during that period of time?

A. I just don't remember. I know they been living home part of the time. I didn't keep up with them all the time, we be working and we don't keep up with each other. I know they were at home.

Q. They were living at home?

A. Yes, sir.

Q. Where is home, your mother's home?

A. Pleasant Hill, Alabama, yes, sir.

Judge McDuffie: Didn't you live here at Selma a while and go to school?

A. Yes, I don't know what year it was. I forget.

Mr. McConnell: I was asking about the period laid in the indictment as their place of residence.

The witness was thereupon excused.

SAMMY B. TOWNS, witness on behalf of the Government testified on direct examination as follows:

Judge McDuffie: These boys are not charged with any conspiracy?

Mr. McConnell: They are alleged to have been co-conspirators, but are not named as defendants.

Judge McDuffie: You don't have to testify to anything that might bring upon yourself the charge of violating the law. Your case is over with, and you are not here to be tried again for failing to register. Your mother has been indicted and she has plead guilty. So has your father, for trying to keep you out of the army. You are not being tried now, but if your testimony would indicate that you helped your mother and father in trying to avoid the service, then, you could be indicted. Nobody knows that will be done, of course, but you don't have to tell on yourself. You don't have to make any statement that [fol. 92] might hurt you in the future. Do you understand what I am talking about? You are here as a witness, and no witness has to testify to anything that might be harmful to him. If you care to testify, you may do so, but, if you don't want to testify to anything that happened, you need not do so. We are not interested in anybody today but Adams, C. J. Adams. If you understand what I am talking about, you make your decision whether you wish to testify today or not.

A. I don't see any need. We are already convicted. We don't know no more than what they told us. I don't see no need in testifying, we already are convicted.

Q. You are not being tried today.

A. I don't know anything but what they told me. What I saw in the bible, I sure don't know myself. They had to tell me.

Mr. McConnell: Let me ask him the question. Maybe

that will clarify it. I want to ask you whether or not you appeared personally before a notary public and signed an affidavit that you were born June 9th, 1930, in connection with getting a birth certificate during the month of March, 1944? That is the question I want to ask him.

Judge McDuffie: Sam, you don't have to answer that question if you don't care to. That is what I have been trying to explain to you. You have a right to say "No, that might get me into trouble." That act could be construed as a part of a general agreement or understanding between you, your mother, your father and the notary public Adams, all of you working to the common end of trying to keep you boys out of the army, if you don't want to say you made that affidavit you don't have to say so. What are your wishes?

A. We were not trying to stay out of the army.

Judge McDuffie: The question is whether you [fol. 93] want to testify whether you made that affidavit before Adams. You don't have to say you did sign the papers. You can stand on your constitutional rights and say "I don't want to testify about anything connected with this whole thing."

A. Yes, sir. I signed it.

Judge McDuffie: Well, he says he signed it. I don't know whether he understands what I have been trying to explain to him or not. I hope he understands. Do you understand what I have been saying that signing the affidavit, going anywhere, doing anything in furthering the move that your mother started by getting these certificates, making statements, making affidavits before the notary public, and getting delayed birth certificates, etc., if you, with the intent to keep out of the service, did that, you don't have to testify in this case at all. If, of course, you were obeying the order of your mother and had no intention of trying to keep out, I don't think you could be convicted on a charge of conspiracy.

A. I didn't understand what you were talking about at first.

Judge McDuffie: Do you understand now?

A. Yes, sir. I didn't sign nothing like that.

Judge McDuffie: You just signed your birth certificate and it was not done with any intention to keep from going in the service?

A. No, sir.

That is my signature to birth certificate marked Plaintiff Exhibit 5. I signed it before Adams. I lived at the same place January 1, 1942 and up until February 10, 1945. That was at Pleasant Hill, Alabama. Samuel C. Towns lived at the same place and also John Derry Towns. Samuel C. Towns and John Derry Towns also signed an affidavit for their birth date just like I signed for mine at the same time, I signed mine. I was there with them. I saw them sign them before Adams. I saw [fol. 94] them all sign the affidavits. My mother and father were also there. My mother had a bible with her.

On cross-examination the witness testified as follows:

My mother came with me that day. All of us signed that day I think. My mother came in after we had left out. She was not in the room when I signed. She came in after we signed it. We met her coming in the door as we were going out.

Harry Davis, recalled, testified as follows: I did in company with Chief H. L. Dickerson, Chief of Police of Selma, Alabama, talk with the defendant, C. J. Adams, during the month of June, 1945, with reference to these delayed birth certificates of Samuel C. Towns, Sammy B. Towns and John Derry Towns and the supporting documents relating to the bible and with reference to the bible in this case. He told me what he did freely and voluntarily. I talked with him in the office of Chief Dickerson in the City of Selma. He told me he had notarized the birth certificates. He said he had a form there which had been filled out down to a certain point and that up until that time he had not seen the boys and at the time they walked in for the notarization he then realized he said, you could look at them and tell they were over eighteen and he furthermore stated that he had notarized the birth certificates which you mentioned. He said that he had proceeded with his activities after he had recognized the fact that they were over the age of eighteen.

The above is a substance of what he told me.

On cross-examination he testified. He told me at the time we were in Chief Dickerson's office they were over eighteen. He told me that at the time the boys walked in he knew at that minute and realized that they were over eighteen. I am positive of that. Although he knew it, he went ahead with the proceedings. I have a written [fol. 95] statement on that. I don't see that in the statement, but know that he told me that. That was his statement.

Judge McDuffie: Did he take that particular part of the statement? He may not have taken all of his statement.

Mr. Gayle: Did you write it all down?

A. I wrote a statement.

Q. I would like to see it, please.

Judge McDuffie: How long is it?

Mr. McConnell: I have no objection to his reading the statement. I asked him to look at it and refresh his memory.

A. This was made June 16, 1945. I, C. J. Adams, hereby made the following statement to Harry Davis, who I know to be a special agent of the Federal Bureau of Investigation, voluntarily and of my own free will and accord, no threats or promises having been used, and knowing the same may be used in court; the following documents have been exhibited before me; delayed birth certificate Sammy B. Towns; delayed birth certificate Samuel C. Towns, delayed birth certificate John Towns; bible record, family bible of Carrie Lee Towns, listing birth of Sammy B. Towns; bible record, family bible of Carrie Lee Towns, listing birth of Samuel C. Towns; bible record, family bible of Carrie Lee Towns, listing birth of John Towns. All of the photostatic copies of the documents listed above are notarized by me and bear my signature. They were exhibited to me in the presence of H. L. Dickerson, Chief of Police, Selma, Alabama. I have read the above statement and the same has been read to me. I signed the same in the presence of the witnesses listed below. C. J. Adams. H. L. Dickerson, Chief of Police. Selma, Alabama. 6/16/45. Harry M. Davis, special agent, Federal Bureau of Investigation. Birmingham, Alabama."

I took the statement and that was in the conversation and I had it signed by him in my presence. The early [fol. 96] part of this statement was not in his exact wording. I will do the best I can to give you the exact wording. Adams was explaining the form and he said that he had at this particular time, going down the form, not seen the boys, and at a certain time the boys came into the office, and that was the first time he had seen them, and he said, "you can look at them and tell they are over eighteen."

Q. Is it not a fact that he made that statement after he had gone through the trial and had seen these boys on trial and had heard all this evidence.

A. They had gone through a trial, yes.

Q. He had seen these men in this court and he had heard all the testimony, and then he said that you could look at them and tell they were over eighteen, but he didn't say that on that day when he took that acknowledgment that you could look at them and tell they were over eighteen, did he make that statement to you that he knew then, when he took that acknowledgment that they looked like they were over eighteen, or did he make that statement afterwards that he now realized they looked like they were over eighteen?

Judge McDuffie: You have asked him several questions without giving him an opportunity to answer. He said he knew they were eighteen at that time they walked in the office.

Q. What were his exact words? Did he say he knew they were eighteen at that time?

A. Well, he was talking about the time they filled in the form.

Q. I am asking you what he said. I do not want your conclusion. I am not trying to make you out as having done anything wrong.

Judge McDuffie: What Mr. Gayle is trying to find out is if his statement was that when they signed the papers [fol. 97] before him he could look at them and tell or anybody could tell—whatever he said along that line—they were over eighteen, was that statement by him made at the time he filled out the papers or after the time the

papers were filled out, did he say, when he was fixing the papers and at that time when they came in to sign these papers, anybody could see they were over eighteen, when was it he made that statement?

A. At the time they came in to sign the papers, he said you could look at them and tell they were over eighteen.

Q. He made that statement himself? He used those words? You heard him use those words or did you come to the conclusion because he was talking about it that he used those words?

A. He came down the line and said they didn't come to my office until this point, that was the first time I had seen them, and you could look at them and tell they were over eighteen.

Q. Those are his exact words?

A. Yes, sir.

The witness was thereupon excused.

Chief H. L. Dickerson, witness on behalf of the government testified on direct examination as follows: I am Chief of Police for the City of Selma. I recall the occasion when Mr. Harry Davis of the F. B. I. talked with Charlie Adams in my presence during the month of June, 1945. I heard the entire conversation and think I witnessed the statement that Adams made. I never saw the boys and didn't know who they were referring to, but Adams told Davis in my presence that up until the time the boys were brought in, or who ever Mr. Davis was talking to him about, he had never seen them before in his life, until they were brought in for this affidavit to be made. Davis questioned him along the line of the appearance of the boys as to how old he might have thought they [fol. 98] were, and Adams recalled he thought they looked like they were over eighteen years in his opinion.

On cross-examination the witness testified as follows: I saw Mr. Davis take the statement. Adams did not say that he ever discovered they were over eighteen years of age.

On re-direct examination the witness testified: He did say that in his opinion they were over 18 years of age. He said he arrived at that opinion the morning the boys arrived whenever that morning was.

On re-cross examination the witness testified: Mr. Davis questioned him in regards to their appearance, as to how old he might have thought they were, how old they looked to be, and he said in his opinion he would have thought they were over eighteen. He didn't say when he formed that opinion as the only time referred to was the morning he made the affidavits.

The witness was thereupon excused.

CHARLES A. APPEL, JR., witness on behalf of the government testified on direct examination as follows: My name is Charles A. Appel. I am special agent for the F. B. I. I work in the laboratory in the Bureau in Washington, D. C. I have worked there ever since it was started in 1922. I said I started to work in 1922, but mean I started in 1932. It was formerly organized in 1932, and I have been engaged in the examination of handwriting, examination of typewriting, examination of documents of any kind concerning alterations or changes or whether a document is genuine. Prior to the time I started work with the F. B. I. laboratory in 1932 I attended lectures of J. Tordyce Wood of Chicago, Wilbur S. Osborne of New York and Dr. Wilmer Souder of the National Bureau of Standards, Washington, D. C. They were all experts in [fol. 99] that line of work. I have examined a large number of documents, printed, written, typewritten, and that sort of thing during my course of work. I examined a certain bible that was sent to me by Mr. Harry Davis from Montgomery. The bible marked Exhibit 15 is the bible I examined. I examined it particularly with reference to the entries recording births of children to ascertain whether it was genuine. I made the examination as to the age of that bible and whether or not it looked its age. I have enlarged photographs of the birth dates in the bible. This is a photographic enlargement of a page of the bible with entries as to dates of births of various persons. These dates run back on this page to 1910, and I examined the bible to ascertain if the bible was in existence at that time, and I found on the fly leaf of the bible some printed data which showed me that the bible could not possibly have been in existence at the time of these dates. I have a picture of that printed page that I just referred to. This is a photographic enlargement

of the back of the second page, I believe, in which is set out the license to print the bible, which was issued the 13th day of February, 1939, at Edinburgh, the date of this license being March 10th, 1939. This is in small print which many people cannot read without enlargement. It is a King James version of the bible. It has to be authorized before it is published. The date of publication would have to be subsequent to the date of the authorization for publication. I matched the edges of the page bearing the names of the children and the birth dates and the tear shown here, showing the exact match of the torn edges just the way it was torn out, part of the page is still attached to it. There was another page, which is the reverse of that page, the same tear looks a little different on the other side, with the dates of their births.

On cross-examination the witness testified as follows: I am an expert in this line of work. I did not make the pictures to ascertain the correct reading; I [fol. 100] simply made them to bring here to explain what I found. It is not the date of publication of the bible but is a means of ascertaining the approximate date of publication. I know that as an individual. I don't know the date of publication. It does not have the exact date of publication. It shows that it could not have been published before this date. They have to have a license in England and when I see the license date I know that it has to be published after that date because in England they require a license. This particular book, the King James version has to be licensed in the United States. It is not published in the United States without a license from England. Many books carry dates of publication. It depends on who publishes them. It depends on whether they choose to put it in or not. That is not the date of publication.

On re-direct examination the witness testified: I could not certify, looking at these entries and that page, that these entries were made many years ago.

On re-cross examination the witness testified as follows: I am an expert.

Mr. McConnell: That is the government's case.

Mr. McConnell: If the court please, the gentlemen wants to further cross examine Mr. Appel.

Judge McDuffie: He was just invited to lunch. I thought they were through with him.

Q. I will ask you to look at this bible here and tell me what version that is?

A. It is a King James version.

Q. Will you show me the date of publication in that bible, please sir?

A. I don't see any date of publication.

Q. I believe you stated that the King James version had to have a license or date of publication?

A. I didn't say any such thing.

Q. I said I thought I understood you to say that?

A. I did not.

[fol. 101] Q. That has no date of publication and that bible is a King James version?

A. Yes, sir.

Q. Why did that not have to carry a license or a date of publication?

A. I don't know any particular reason why it should have to.

Q. I thought you said in this other one you could tell it was published after that license date. Could you tell at any time when this was published just by looking at it?

A. No, because the statement does not appear in that book. It might be possible to date it by other means.

Q. Yes, but I mean if you looked at it. If your Honor, please, I would like to offer this in evidence, but I hate to offer this and not be able to get it back. That is the position we are in here. Do you see any date of publication in that bible?

A. I have not read this myself.

Q. I wonder if you could locate the date for me?

A. On the fly leaf, the context says comformable to that of the edition of 1611, commonly known as the authorized or King James version.

Q. You don't know just by looking at that when it was published?

A. No, I don't see any date of publication in it.

Q. Thank you, sir. Would you look at this and tell me if you could locate in that—that is rather an old one—the date of publication?

A. This has copyrights dates in it?

Q. That is not a date of publication, is it, sir?

A. That is the date of the copyright.

Q. By copyrighted it means simply when they made application to have it copyrighted, but does not give the date of publication?

A. No, but it determines the publication was after that date.

Q. Could you name the date of publication of that book right now without study?

[fol. 102] A. No, it was after the date of the copyright.

Q. But you could not tell what date it was published after that, could you?

A. That is right.

Q. Could you give me the definite date of the publication of this one just by looking at that book, not by what you later discovered, could you give me the date of its publication.

A. I cannot tell the date any more than to say it was not before this certificate.

Q. That is all you could say?

A. That is right.

Q. You could not say when it was published?

Judge McDuffie: I don't think anybody could say that it was published on any particular date.

Mr. Gayle: The question has been raised here. Mr. McConnell has said that they intended to show that the date of publication was in this book, the date it was published, and that the certificate said that no date of publication was shown. I am trying to prove and let the jury see there is no date of publication in any of those books.

Q. (Mr. Gayle continuing) Look at that, please, sir.

A. I believe this is the same edition as the previous one. I looked at, the same printing and everything, and there is no date of publication in it.

Q. You could not tell, of course, when it was published?

A. No, sir.

Q. This has a date, I believe, has it not? Is that the date it is published there?

A. This was published by a bible house in New York in 1944.

Q. That shows the date, does it not?
A. Yes.
Q. Thank you.

[fol. 103] On re-re-direct examination the witness testified as follows:

Q. You have been handed by Mr. Gayle four bibles, while he was examining you a few moments ago, and you testified concerning each one of them. He asked you in each case to look at it and see whether or not it had a date of publication, and you did so. Now, in each instance here, in each of those bibles, did you look for the date of publication or the date of copyright or the date of authorization on the title page or the reverse of that page?
A. The first two or three pages, yes, sir?
Q. Were any of those four bibles which he handed you printed in London or Great Britain?
A. No, they were not.
Q. Did any of those four bibles carry the language here printed by authority?
A. No, they did not.
Q. Now, I am handing you here the government's exhibit, the bible which is here involved in this case, and I will ask you where in that bible is that authorization that you referred to, in what portion of the bible is it?
A. It is on the title page and the reverse.
Q. Exactly where you have looked in each of the other bibles for the date of publication, authorization or copyright?
A. Yes, sir.

Judge McDuffie: Are you through with this gentlemen, both sides?
Mr. McConnell: Yes, sir.
Mr. Gayle: Yes, sir.

The witness was thereupon excused.

C. J. Adams, witness on behalf of defendant testified on direct examination as follows: My name is Charles J. Adams. I am also known as C. J. Adams. I know Carrie [fol. 104] Lee Towns when I see her. I recall the occasion when she came up to my office regarding obtaining birth certificates. She did not tell me what she wanted these certificates for. I had no knowledge of any kind what

she wanted these birth certificates for. I looked at the bible which was in possession of Carrie Lee Towns. I am not an expert on the age of a bible. I do know a brand new bible from an old one. I am not an expert to say what is an old and what is a new bible. It is not the bible I saw. The bible I saw when I was on the stand in March, the only thing that enabled me to identify the bible was that I saw the names of Sammy B. and Samuel C. Towns on one line and one birth date for the two, and the reason I remember that was when I was taking the acknowledgment, the question arose by me, I said "You say there are three boys and I only see two" and she said "There are two on the same line, they are twins, Sammy B. and Samuel C." That is the only thing in the world I have to identify the bible. I don't see that. That is the only thing in the world that enabled me to say it was the bible and I don't see that now.

Q. Look at it carefully and see can you find it?

This looks like it. The bible that I saw at the time I took the acknowledgment had those names written on one sheet and the sheet was not torn out of the bible. When they came before me the sheet was not torn out of the bible and was not torn out when I was on this stand in March testifying for the government. That is the only difference I see in the bible. The sheet was in the bible and it has since been torn out. The mother came first and brought the bible with her and I took her acknowledgment. I also certified as to the bible and stated that date of publication was not shown. The real date of publication is printed on the form and, of course, when the date was asked, there was a blank place for me to write date of publication. I wrote date of publication not shown, because I did not see it. I did not see any date of publication. The boys later came in and I [fol. 105] took their acknowledgments. The reason I want to see the three Towns boys's certificates, is the only proof I have that they did come in is that I took their acknowledgment. If you will note on the birth certificate you will find that the acknowledgment of the mother was taken a day or two ahead of the date of the acknowledgment of the boys. After I acknowledged the certificate for her I handed them back to her and told her to tell the boys to come in and I would take

their acknowledgments. I averaged between five and six hundred birth certificates for the year 1944, but this year I would not average a hundred or two. Those are the certificates that they came before me and I took their acknowledgments. I recall the time I had the conversation with the Chief of Police and Mr. Davis. I did not tell them that the morning they signed the certificates that I knew they were over 18 years of age. When the F. B. I. agent asked me about my opinion of the boys, I told him that I could not even remember seeing the boys until I saw them sitting down there at the date of the trial in March. I did not tell him at that time, on the day I took that acknowledgment, that I thought they were over eighteen. When he asked me my opinion I told him my opinion was they would be over fifteen. I did not use the word eighteen. I told him my opinion was that they would be over fifteen. I formed that opinion after I had seen them up here at that trial. I did not know them on the stand today until the second one came in. I saw them before when I testified for the government. That was when I formed my opinion about their ages. I do not recall ever seeing Carrie Lee Towns any time before up until the time she brought the bible in. I am 66 years old and am a veteran of World War I. I have served in the army three times. I have three honorable discharges from the United States Army. I served in the Philippines. I was a volunteer in World War I. I have been helping the colored people since World War II with their selective service papers. I started helping the colored veterans in 1920. I have [fol. 106] helped about 300 since World War II. I have never made any charges. I was convicted once in this Court and served time. I have a record of service with the United States Government.

On cross-examination the witness testified: I will have to ask you to come closer or talk louder. I am not able to hear you. They call me C. J. I said I filled out about 300 papers, helping world war veterans, but I have filled out more than 1,000 papers for selective service files. I have never made any charges for those. I know that it is against the law to charge. I filled out about 400 or 500 acknowledgments in the year 1944. I filled out less in 1943 than in 1944. I would say probably 200

less. In 1942 the acknowledgments were almost negligible. I think about 100 in 1945 so far; 1944 was the biggest year for acknowledgments. I would say that was caused by a lot of people getting birth certificates for defense work and for entrance in schools, by moving from place to place where birth certificates were required, and by a lot of people going to the north who could not get defense jobs without birth certificates. A large number of those were negro women who never worked in a defense factory before that were able to get employment in defense factories, if they could secure birth certificates.

Q. Is it not so that the birth certificate business was what caused you to have so many acknowledgments in 1944 than any other time?

A. That is right.

The whole 500 or 600 acknowledgments that I referred to were in reference to birth certificates in 1944, and when I said 200 less the year before I still was referring to birth certificates and when I say that it had fallen off in 1945 I still was referring to birth certificates. I did not furnish the forms for all of those birth certificates. In filling out the birth certificates in 1944 many of them were carried to Montgomery by [fol. 107] the people themselves, and some were carried by me, and some were sent by me. I am unable to say who sent off the three Towns birth certificates. I used the typewritten forms for the supporting documents for the Towns certificates. I don't know who made up those forms. I made quite a few and bought some for five cents apiece from Mr. Lapsley and those were typewritten. I made up some of them. I made them up on the typewriter. I did not keep a supply of them on hand at all times. I made them up as they were needed. I did not have a supply of them on hand. When a person wants a birth certificate, he writes to Montgomery and probably sends fifty cents for his birth certificate. Montgomery makes the search and if it is there, it is sent to that person. If it is not there, Montgomery sends that person an application blank, Form VS 4, and about half a dozen different documentary evidences that may be used. I am speaking about the yellow form marked Plaintiff Exhibit No. 9. That is what Montgomery sends them. I call it form VS 4. It shows on the back what documentary

evidence is acceptable. Every time Montgomery sends a person VS 4 forms, it sends more documentary forms than that person needs. Montgomery sends the forms for documents. I will show you one. You see this is printed. The bible record on one side, the baptismal record on the other side, and there are about six of them, a long sheet containing about six. I made up quite a few of them on the typewriter. The reason that I make them up is that the customers more than half the time mess them up by trying to get them made out, then it was up to me to type a form. That happened about fifty percent of the time, and that would be about twenty-five a month in 1944 that I have typed. Whenever I had to type one, I would more or less type three. I spell bible—b i b l e—. I am not able to say positively that I typed it because I had a girl teaching her shorthand and touch typewriting at that time. She did the typing. I did very little typing. I was teaching her [fol. 108] touch system. I didn't teach her shorthand. I was teaching her typing by the touch system. I am not able to say that was the bible, because of the fact—Let me have the bible once more—now, when I took the acknowledgments for the three boys, the sheet was in the bible and the names of Sammy B. and Samuel C. Towns were written near the bottom of the page.

Q. Will you just answer the question, please? Is that or is it not the bible which you examined?

I am not positive that it is the bible. I know it was an old looking bible. You see I cannot remember enough about the bible to say whether or not it was larger or smaller than this. The writing is the only thing to enable me to identify it. I still hold that when I took the acknowledgment, the names of the twins were written near the bottom of the page of the sheet that I saw. At the trial of the Towns I did not positively identify the bible as being the same. I recall the testimony at the trial of the three Towns boys. My name is C. J. Adams. I am a notary public of Dallas County, Alabama. I recall acknowledging the signatures as notary public on some delayed birth certificates for the three Towns boys. Samuel C., Sammy B. and John D. Towns, according to my record. There was nothing at the time to make me remember it. It was in the month of March, 1944.

I looked at the three copies of delayed birth certificates, marked Exhibit A, B, and C and that is my signature, and they are the ones that I notarized." I remember giving the information that you have just read, I am familiar with the manner in which delayed birth certificates are filed, and the two supporting affidavits. You handed me the holy bible and asked me to look at it, and I did look at it. I examined the bible and told the Court that I was trying to ascertain whether or not that was the bible examined by me. I remember full well when I looked and scanned over the bible and saw that the names of Sammy B. and Samuel C. were written on one line and one birth date, that was the only evidence [fol. 109] in the world I had to say this was the bible, the evidence I am inclined to feel would show that. I say I have every reason to believe that this is the bible. It reads I have every reason to believe this is the bible in the case of Sammy B. and Samuel C. Towns, born June 9th, 1930. After I looked at the names I said I have every reason to believe that this is the bible. That is all I remember saying. I don't remember saying it. If I said it it was true to the best of my knowledge and belief. I still don't know whether that is the bible or not.

Q. What is the date of publication of the bible which you hold in your hand, which is a government exhibit?

A. Of all the bibles which I have handled, I look on this page here.

Q. What page is that?

A. The first page, the first or first few pages.

Q. Tell us what you found on the pages where you always look to see the date of publication?

A. I failed to find the date of publication.

Q. Just read that bible and tell us what you found on those pages?

Mr. Gayle: I object to the question on the ground that the book itself is the best evidence.

Judge McDuffie: Overrule your objection. Note an exception.

Q. Will you answer the question, please?

A. I will in just a second. Where is the form I handed you a moment ago?

Q. I was hoping to keep it. Here you are. Do you always keep that by the way on your person?

A. No, sir. I just happened to have it at this trial.

You see when I got the names of the boys from the [fol. 110] bible and it says right here "I certify that I have examined the family bible now in the possession of". I wrote Carrie Towns, "which was published by in the year of " I looked at this bible here, I wrote Collins' Clear-Type Press, Glasgow, Toronto Sydney and Auckland. I then looked for the year of publication on the first page and the reverse of this page. I cannot read what is on that page. That which is on the first page is "the holy bible containing the old and new testaments translated out of the original tongues and with the former translations diligently compared and revised by his Majesty's special command. Appointed to be read in churches. Authorized King James version. Printed by authority. London and New York. Collins' Clear-Type Press, Glasgow, Toronto, Sydney and Auckland." That is all there is on the first page. On the second page, or reverse side of what I have been reading I can read the word "license" and "T. M. Cooper, and I can read "Printed in Great Britain." I can see a small paragraph on that page, but I cannot read it. I have tried but can't read it. It is such small print, and I am unable to read it. I don't remember noticing that print on there at the time I made this certificate. I remember looking where I always look to find the date of publication of bibles. I looked carefully and diligently and when I failed to find the date I simply wrote date of publication not shown. I did not read that paragraph to see if the date was in that paragraph. The first time I talked with the Towns family about the Towns boys was the time Carrie came to me with the bible and asked me to get out the papers for birth certificates.

Q. I hand you here Government Exhibit No. 6 and ask you to read your acknowledgment there of the signature of Carrie Towns, insofar as the date is concerned, March 23, 1944? She was there at that time?

A. She was.

She was there at that time appeared before me. I am sure it was she. I didn't know it before, but I have

[fol. 111] known her since then. No one introduced her to me at that time. I based my certificate on her statement and her bible. I do not remember seeing her before that date. I would not have remembered her probably if it had not been for the fact that I said the two Towns boys' names were written on one line, and I said to her, you said there were three boys and I only see two, and she said yes, the two twins are written on one line. Then I looked at her and remembered her full well. Looking at Exhibit 4 and at my signature to the affidavit of Carrie Lee Towns she was before me on March 24, I took the acknowledgment of Samuel C. Towns on March 25th. He was before me on that date. Each of the other boys were before me on the 25th. I did not know who they were and no one introduced them to me. I could not say whether or not they were the three boys I saw here on trial or not. When it comes to a birth certificate, there is not one thing in the certificate that says that such person is known to me or made known to me. I took the acknowledgment. I simply say that the boys said that the statement they had made was true. I said nothing about my knowing them or knowing that the statement they made was true. Carrie Towns came to see me on the 23rd day of March, and she came back again on the 24th. The boys came to see on the 25th. When she first came to see me she did not just speak of John, she spoke of all three of them. She filled out the affidavits on John on the 23rd and came back on the 24th and filled out the affidavit for the twins. I do not know her reason for that. I think she made out two on the 23rd and one on the 25th, tho. I am unable to say why she did it that way. She was not doing this under my instruction. She sought me I didn't seek her. When she came to see me she took her seat by my side and said she wanted me to make out papers to get birth certificates for her children. I don't remember anything else she said because it was my say then. I asked her what were the names of the boys and she told me. There were three of them. Then I [fol. 112] began writing down their names on the application for birth certificate. I am not able to say whether she brought the applications with her or whether I had them. Sometimes I have them in my office and sometimes I don't. I believe that the reason two were made out one

day and one the other was because I was out of application blanks. I don't furnish anything until I make out the yellow form VS 4. It looks like to me I furnished one of the forms. I may have furnished both. After I filled them out and took her acknowledgment and put the seal on it, I handed them back to her and told her to have the boys come so that I could take their acknowledgments. I also told her about the supporting documents that had to be sent in. A whole lot of them don't know about that. The majority who come think I can do everything else that is necessary to do. After I make out the VS 4, I tell them about the documentary evidence that is necessary and, of course, ask them about which of those twelve listed on the back of the form they can furnish. I ask them what two of those can you most conveniently furnish. I feel sure that I did ask Carrie Towns that. I cannot remember what she said. She had the bible with her when she first came in. She said "Here is the bible." After that I took the acknowledgment of the boys from the bible, I mean by acknowledgment of the boys from the bible that it was the record that the bible showed about their names and ages, and etc. and was put on a documentary form. I mean to say that I signed the certificate that I examined the bible. An acknowledgment is a statement made by a person under oath. I made that statement under oath, that I examined the bible in so far as the names of the Towns children and birth dates, etc. I looked at the bible enough to see whether or not the date of publication was shown where it is usually shown. I do not remember Carrie coming before me in the month of February, 1944. She might have but I don't recall it if she did. That is my signature on that document. It was sworn to before me on this the 9th day of Feb-
[fol. 113] ruary, 1944, by Carrie Lee Towns. I don't remember her being here on that date, but according to this record, and this record is correct, it is my writing, then she was. The document I just read is a birth certificate and relates to the birth of Lenon Towns. I took the acknowledgment at that time but I didn't know her. Exhibit 14 handed me by you is a birth certificate relating to Isham Towns. It says that the father's name is Walter Towns and that the present post office address of the father is Berlin, Alabama.

Q. What else does it say?

A. It says the birth place is Dallas County, occupation of the father is farmer, number of children 11.

Q. Number of children 11?

A. Yes, sir.

Q. That is what it says?

A. Yes, sir. Now, you want to bear in mind I never saw that before until just now, until you brought it before me a moment ago I didn't handle it. The only way in the world for me to tell you I filled out those supporting documents, is for me to look at them. I have no recollection whatsoever of it. I don't recall this except from what the record says. That is because of the volume of business I handle. I have no recollection of what these boys looked like when they came in to sign those papers. I know Sammy B. came in and said his name was Sammy B. but what he looked like when he did I have no recollection.

Q. You were busy at the time he came in?

A. I was busy transacting business with him.

I was looking at him when he wrote his name and I took his acknowledgment. At that time I didn't advance the least thought about his age. I was getting him a delayed birth certificate and it is not my duty to comment on the age of a person. All I say is that he acknowledges that what he says is true. He didn't tell me his age and I didn't ask him. I cannot say I even looked at it. I filled out the papers a day or two before he came in. I don't [fol. 114] remember filling out his birth date as October 9, 1923. I filled the paper out from the records. When he came it was just a matter of my taking his acknowledgment. After he wrote his name, he signed the certificate that the information he gave over his signature was true to the best of his knowledge and belief. I was interested in knowing whether it was true, but I was not interested in finding out whether or not it was true. I will not say that I did not want to find out whether it was true or not but will say that I did not make any effort to find out whether it was true or not. As a Notary Public I didn't understand it was my duty to make investigations as to whether a statement was true or false. All I know is that he said that it was true and that is all I was concerned

about, and that is all that I was interested in. I was interested in the truth of what I said about the bible. I understand the purpose of the bible certificate and I had them use the Bible, because of the fact that the law has changed so that there must be documentary evidence of something written at least one year previously. The documentary evidence must be of something written at least one year previously. You might have to ask them why they used the bible. I say that I formed an opinion that these boys were over fifteen years old when the F. B. I. man asked my opinion in Mr. Dickerson's office, as to how old I thought they were, and I told him that in my opinion they looked to be more than fifteen years old. I did not say how much older they looked than that. I told him they looked to be over fifteen. I never remember seeing them at all until they were here in the court room. I saw them a whole lots longer here in the court room than when they were in my office and signed those affidavits, and furthermore, when I looked at them here, I looked at them with a thought as to their age, but when they came into my office, this was just a matter of taking an acknowledgment as to what they said was true, and I feel that the procedure that I used in executing the acknowledgments is the same used by thousands of notaries throughout the [fol. 115] country. I take every precaution whenever I get hold of a paper, where it reads that I say the person is known to me, if that person is not known to me, I put a little asterisk there and write made known to me. I took ordinary precaution in this case as any other notary public would have taken. I took it for granted that the statement they made was true. The statement I made was true. It was true, no matter how old these boys were, for they said that what they said was true, regardless of how old they were, they said their statement was true. I would not have made that same certificate if they had been old grey headed men that had come before me, because of his age, if he was old and grey headed, I would have known he was making a mistake, and I would not have made the certificate.

Q. Suppose they had been old grey headed men, would you have made that same certificate?

A. You have sworn me. Now, you are asking me an

opinion. An opinion is what I would have formed about an old person. These boys looked like they could be telling the truth. There was nothing suggested to my mind that they were a few years older. I am honest when I tell you, even though you are the prosecutor, that I cannot say that I looked at the date to compare the date of birth with the ages that they would be.

Judge McDuffie: I want to ask you a question. Did you know what the mother of these boys wanted to do with that certificate?

A. I did not, sir.

Judge McDuffie: She did not tell you that she wanted to keep them out of the services?

A. No, sir. One minute, Judge, if she had, it would have been a different picture, because the F. B. I. man came from Birmingham to my house sat down in my front room and advised me to notify him of anybody carrying on unamerican activities, he gave me his address and telephone number and told me if it were urgent to wire him [fol. 116] and if it were not to write him. I put that information down on my American Legion card, and put it down in shorthand, so that if the card would fall into the hands of the ordinary person they would not be able to decipher it. Nobody has ever come to me with a thought of my helping him to keep out of the service. I am in position to produce to you evidence that I encouraged men to enlist voluntarily in 1940.

Judge McDuffie: We know you have been a patriot. You have testified about that; anyhow, we will not go into that.

I charge 25¢ per impression of the seal for notarizing. I charged Carrie Towns for these certificates $1.00 each. That included everything. It did not include charges for certified copies. The certified copies come from Montgomery and she paid that in addition. She did not give me $1.50 for each one of these boys. She gave me $3.00 for all three of the boys. Whatever the Montgomery charge was, was in addition to my fee of $3.00. I do not know whether I sent for the certified copies or whether she did. I am still a notary public. I am in the notary public business; that covers helping to prepare papers for

World War I veterans and World War II veterans, and things like that. It also covers any other notary work that might come. For instance, somebody might come in for me to take an acknowledgment on a paper, and I charge 25 cents. That is not the only business I am in. I am not in the real estate business. I have been in the business of a Notary Public for about 20 years. I was a railway mail clerk until I retired about nine years ago.

The witness was thereupon excused.

Mr. Gayle: Your Honor, that is the defendant's case.
Judge McDuffie: Anything rebuttal?
Mr. McConnell: Yes, sir.

[fol. 117] DOROTHY PETTISS, being recalled, testified as follows: I still am deputy clerk. I have with me the file of this court in the case of United States vs. C. J. Adams and others, being case No. 9656. I have the original indictment in that case.

Q. Will you identify it, please, and let me have it?
A. Yes, sir.

Mr. McConnell: I wish to introduce the original indictment, if the court please, and ask that it be marked as an exhibit, and ask leave, after this trial, to substitute a copy in evidence, in order that the original may be retained in its original file in the office of the clerk of the court. May I ask you, can your file be so fixed as to show nothing except the indictment, so that we can use it without taking it out of your file?

A. Yes, sir.

Mr. McConnell: I offer this indictment as Exhibit No. 16.

Thereupon, said indictment was marked Plaintiff Exhibit No. 16.

I have the minutes of the court showing the plea and conviction of this defendant, C. J. Adams. I can identify it. It was on page 324 Selma, Minutes, Volume 3, judgment of the court in the case of the United States of America vs. C. J. Adams, Criminal No. 9656.

Mr. McConnell: If the court please I wish to introduce the minutes in evidence, with leave to substitute a true

copy thereafter, and ask permission also not to attempt to dismantle, the volume but just to mark it in the volume.

Thereupon, said minutes were marked Plaintiff Exhibit No. 17.

Mr. McConnell: That is all I wish to ask Miss Pettiss. [fol. 118] Mr. Gayle: No questions.

Mr. McConnell: Will the Court give me about two minutes. We need not take a recess, but I presume we might as well. I want to see if I have any further rebuttal.

Mr. McConnell: If the court please, we have no further rebuttal. There are three counts in the indictment that we would like to withdraw.

Judge McDuffie: That is on the question of what local board.

Mr. McConnell: Yes, sir. We put in Count One, for instance, alleging that the boys failed to register with Local Board One, and Count Two alleging that the same person failed to register with Local Board Two. I am now convinced from the evidence and from the regulations that Local Board Two is the only board which is properly involved, and, therefore, I would like to withdraw Counts 1, 3, and 5. That will leave, of course, Counts 2, 4, 6 and 7. Count 7 is the conspiracy count.

Judge McDuffie: All right, gentlemen, how long do you wish to argue this case? I don't like to limit you, if I can avoid it, but I hope you may be able to cover it within a brief period, doing fully justice to your side of the case. That applies to both of you.

In the course of Mr. McConnell's argument to the jury, he stated that the defendant had equivocated.

Mr. Gayle: May it please your Honor, I would like to object. Mr. McConnell has charged the defendant with equivocation. I believe you used that word. This defendant is not charged in the indictment with equivocation. He was charged in this indictment with falsely and intentionally doing so and so. Mr. McConnell is arguing to the jury that he does not say that the man is not telling the truth in his certificate, but that he has not told all of the truth.

Judge McDuffie: Sometimes a half truth is worse than a lie. That is for the jury to determine. I think it is

proper argument. The jury has heard the testimony and will determine whether it is falsely done.

[fol. 119] Mr. Gayle: I except to your Honor's ruling.

Charge to Jury

Judge McDuffie: Gentlemen of the jury, the court will endeavor as briefly as it can to assist you in arriving at a just verdict in this case. That is all we are here for, including counsel for the defendant and counsel for the government and the court. There is no interest here so far as any official is concerned, of personal interest for or against anybody. Certainly, you have no right to permit any interest that you may have to enter into your deliberations. Indeed, you have no right to put yourselves in the unfortunate place of the defendant. If the rule were otherwise, most of us having some of the milk of human kindness, as most of us do, thank God, the guilty would never be punished. What I am trying to say is you must divorce yourselves, gentlemen, from everything else except the evidence as it came from the witness stand.

This is a colored man. He is entitled to just as much consideration on the trial of the case against him as if his skin were as white as yours. We make no difference between the legal rights of one race and the legal rights of another, and you would pervert your high place, and I would mine, if such a thing were to occur in our dealing with a fellow citizen. I am trying to impress you with the necessity of your not letting any sort of feeling enter into your minds when you go to consider and make up your verdict on this case, after considering it carefully.

These attorneys have most ably represented their respective sides. Attorneys sometimes in their enthusiasm unwittingly say things, make arguments,—it is not with a view of taking advantage of anyone—it is simply an enthusiastic expression of their view point, in hope they might be able to point out to you these views of the testimony and the case as a whole. You, gentlemen, as soon as I get through are going to occupy a higher place than anybody here, even higher than the court itself, for you become the judge and the jury, with the exception of the application of the law. You must apply the law [fol. 120] as the judge gives it to you. If the court is

wrong in its conception of the law, there is a remedy always, for there is a higher court to correct the errors that this court might make. None of us are free from error. We are all human. The errors committed by this court would be errors of bad judgment in the mind of some other judge in a higher court. They would not be errors intentionally committed for one side or the other, because I have no interest in this case other than to help dispose of it and to see that justice is done.

Something was said about the punishment. Sometimes I regret that in this court the juries have nothing to do with the punishment. They do in the state courts. All you are concerned with is the guilt or innocence of one hailed before you. That responsibility of punishment falls upon the shoulders of the court, and it is quite a responsibility. Sometimes the courts would like to be relieved of it. Under our system in the Federal Courts, the judgment of the man on the bench determines entirely what punishment will be meted out, so you are concerned here with guilt or innocence.

Let me say now that an indictment is not evidence. It grows out of an ex parte proceeding. Of course, the grand juries do not try cases. If they have reasonable cause to believe that a crime has been committed, especially so in the cases of felonies, it becomes their duty to return an indictment. The case is tried before a petit jury, which, under our form of government, determines whether or not the charges in that indictment are true, and you even go further and you must believe they are true beyond a reasonable doubt. You cannot convict on suspicion. You must arrive at a conclusion from facts evidenced from the witness stand.

The charge here is in three counts of aiding and abetting. In another count, it is a conspiracy to do an unlawful act. The government has withdrawn Counts 1, 3 and 5, having to do with reporting to another board. This [fol. 121] indictment charges that Walter Towns, his wife, Carrie Lee Towns, together with this defendant and the Towns boys formed a conspiracy in one instance, and in the other instance that Walter, Carrie Lee and this man aided the Towns boys in doing an unlawful thing and that thing was in failure to live up to the law in observance of the selective service act, passed by the Congress of the

United States. In this case, you are not trying Walter Towns or Carrie Lee Towns nor the boys. Walter Towns and Carrie Lee Towns have entered their pleas of guilty to this indictment and their case is disposed of. You are not to consider them at all, except in this, a man cannot conspire with himself. There must be two or more minds—he could aid and abet in the commission of an agreement or a crime without conspiring with anybody. That brings me to the definition of conspiracy. A conspiracy, as this court understands it—and that is the charge here—is an agreement, not one made and signed by the parties, because conspirators don't hail their agreements from the housetops, nor do they sit around the table and call in the neighbors to witness the conspiracy, to do an unlawful thing, but it is an agreement, a tacit understanding, a knowledge on the part of each. You don't have to get it all at one time. I mean they need not gain the knowledge all at one time. I may not enter into the conspiracy while it is in the making, as it were, and be just as guilty as the man who started the whole thought. I may not at first have had the agreement, but if I join in, knowing what the scheme is, if I knew what was going on, and I would do anything in the furtherance of that scheme, then I am as guilty as the rest of them, and if either of the other conspirators, while the conspiracy is in the making, does any act, every other conspirator with him is chargeable as he is. Men have been convicted of conspiracy when the actual crime occurred one hundred miles from where they were at the moment of the crime's commission. Likewise men have been convicted for aiding and abetting when many miles away from the scene of the crime. Conspiracy, [fol. 122] therefore, is an agreement or understanding between two or more people to do an unlawful act or to do a lawful act in an unlawful way. That is what I understand to be a very fair definition of a conspiracy.

Of course, you must believe there was an unlawful scheme, and you must believe beyond a reasonable doubt that those who took part knew it was an unlawful scheme. A man cannot be guilty unless he knew it was wrong. A man may do wrong, but, unless it is in his heart to do wrong, unless it had been in his heart and he knows what he is doing to effect a purpose agreed upon tacitly

or otherwise, that man would not be guilty. Now, the question here is did this defendant—and practically the only question in this case is did this defendant help to do something, knowing that something was wrong, do the facts and circumstances show or point to him as one who was aiding to put over the thought that those boys would not go into the service. As a matter of fact, they didn't go, and the undisputed testimony here is they were subject to the draft law. That may be true and their parents may be guilty, but you must go further and believe that this man knew those certificates were wanted, knew the purpose for which those certificates were wanted, that he knew something about why they were asking for them, that he became a party to it and aided them in violating the law. Now, did that happen? You must be convinced beyond a reasonable doubt that it did happen before you can convict him under those counts which set out that he aided and abetted in having so and so fail to report on such a date. Is there any evidence here to connect him with any aiding and abetting. The same applies to the conspiracy. Conspiracy is not based entirely on just one day. A conspiracy may be formed and perpertrated within three years after it is begun. There is no evidence here that there is any three years involved, so these dates set up were the dates on which the boys failed to report, [fol. 123] and so far as conspiracy is concerned, you must not believe the conspiracy was formed on that particular date they unlawfully failed to report for duty. That is all that is necessary about that date. When the conspiracy was formed is entirely another proposition and what was done on that date may be an overt act, one of which must be proven, not all. The rule is that one overt act must be proved before a man can be convicted for conspiracy, and that is a very safe and sane principle, for you could imagine a man has conspired with his neighbors and convict him on that imagination, there must be some one thing done, which of itself may not make a whole thing, but connected with something else, might bring to your mind a conviction that there was some ulterior motive formed. Now, gentlemen, every overt act need not be an act—for that matter, evidence in a conspiracy case may be gathered together as though

it were a dragnet, it can consist of most anything—I don't think that you could say the moon is made of green cheese and consider that—I am talking about the actions of people, the words of people, the deeds of people sometimes speak louder than words. That is what you consider in making up your minds in this case as to conspiracy.

Now, gentlemen, there are certain rules of evidence that you should observe, that is, in weighing evidence, I should have said. The question of interest, the question of bias, the question of a swift witness, one eager to get something over, the question of a slow witness, from whom it is difficult to get testimony. You use your common knowledge of your fellow man and observe witnesses on the stand, their demeanor, how they testified. A man may be an interested witness and yet tell the truth, but the rule is if a witness is interested, and I charge you that the defendant in this case is interested in the outcome of this trial, because if you say he is not guilty he goes free, and if you say he is guilty, it is up to the court to mete such punishment as it sees fit. Therefore, he is an interested witness. That does not mean he has [fol. 124] not told the truth. The idea is that a man interested may deviate from the path of truth a little more quickly than the fellow who is not interested. That is the theory. It does not say he does deviate from the path of truth. A man may show an eager interest to get something over to you. The rule is you consider those things. You consider the interest in connection with his testimony, and when you apply the measuring sticks or yard sticks or when you use the scales in which to weight what one has said—the evidence in the case—you may consider those very things I have been talking about, interest, bias, prejudice, etc. Those rules apply to every witness who might take the stand. There were two government witnesses. One was on the government payroll. What ever you do could not make them financially interested. I cannot imagine any interest they might have other than doing their job well.

Now probably I have gone out of my way to say those things. Some men in their enthusiasm to do their jobs well may become over zealous. Have you seen any signs of that? They may be very zealous and yet plumb the

line of truth, but the rule is, or I have made it a rule, that you may consider the fact that there are men in their professional work doing this, that or the other, and whether or not they have become enthusiasts to such an extent as to cause them to get away from what the facts really are. I don't mean to say there is any evidence of it at all. I think that is a fair suggestion the court should make in a case of this kind. Yet, the government has witnesses in practically every case. We have to have F. B. I. agents. Some people dislike the thought. We have to maintain the law. We have secret service men in bureaus up there going out, here, there and everywhere, about the land, to find out what is going on, to make inquiries and to tell citizens that it is their duty if a man knows of a violation of the law to report it. We rely on those agencies set up for that purpose. [fol. 125] I am not trying to say what transpired here—that it does not mean anything—the defendant says the government agent told him he wanted him to report to him certain things—it showed that the government agent was simply doing his duty—having decided this was a good man to find out something from, whether this man's judgment was sound or not is not a very material matter. All that was testified to and permitted by the court, in order that fairness may be done to this defendant. A man may be a good man—many good men commit crime sometimes, but just because he commits a crime at one time does not mean he has committed all the other crimes which he is charged with committing. This man has been convicted of a felony, of a similar nature to this, growing out of making payments, getting something out of the government through the making of payments, to which he plead guilty, according to the records. You consider that, but you are not trying him on that, you consider that for two purposes—it goes to his credibility as a witness, because it is a crime involving moral turpitude. The rule is that a man who is shown to have committed a crime involving moral turpitude—you may consider the evidence to that effect in weighing his testimony and determining his credibility, the theory being that a man who commits a felonious crime will more quickly lie than one who has not. Another purpose it may show is what we call guilty knowledge—we call it in the law scienter, on the theory that the man who knows

how to do a thing, may do it more quickly. You simply weigh that when you consider all this testimony, to determine whether or not it could apply to this particular defendant or any defendant, in your case it is this particular defendant.

Now you are the sole arbiters of this testimony. That is your burden and your responsibility. I know how you feel. I know you want to render a true and just verdict, so that when you can go home, you may feel that you have done your duty under your oath of [fol. 126] a very high office. It is a serious case. It is a serious case to this defendant. It is a serious case to society, the observance of law and order, and I know you will give it proper consideration from every angle. Now, gentlemen, the burden is on the government, it never leaves and never shifts from the government, to convince you from all the evidence and circumstances in this case, first, that there was a conspiracy and understanding, secondly, that there was help given, which may have been a part of the conspiracy indeed or an overt act of the conspiracy the giving of help made possible, that there was an agreement of some kind between the parties named in that indictment to bring about the doing of an unlawful thing. Now, as has been suggested, you must believe beyond a reasonable doubt, and the burden is on the government that there was such a thing, such aiding and abetting. Now, that brings me to a definition of what is a reasonable doubt. There have been many definitions of reasonable doubt by many learned gentlemen. I simply try to follow some judge who, I think, is more learned than I am, in stating that a reasonable doubt may compare or indeed it may be the status of the mind of a reasonably cautious and prudent man, which would cause him to hesitate to act in matters of grave concern. Sometimes and often times, a juror cannot explain it. It may arise—you have to have something on which to base it—you are an honest officer of the court and you cannot reach up into thin air and get a reasonable doubt, any more than you can reach up into thin air and find evidence on which to base a verdict of guilty. It is your state of mind, after weighing all this testimony, and if that state of your mind is as I have endeavored to describe, a reasonable doubt exists, and, under the rules, it is your duty to give

this defendant the benefit of that reasonable doubt. You have nothing to do as I said with the punishment. If you believe from the evidence beyond a reasonable doubt that this defendant is guilty as charged in the indictment—you may write that verdict on the back of the indictment, [fol. 127] one of you signing it as foreman,—the form of your verdict will be we, the jury, find the defendant guilty as charged in the indictment. If you find the defendant guilty under Count Two, you write the same, we, the jury find the defendant guilty, under Count Two of the indictment. If you find him guilty under Count Four, you write, we, the jury find the defendant guilty under Count Four of the indictment. If you find him guilty under Count Seven, you write, we, the jury find the defendant guilty under Count Seven of the indictment. You need not specify the counts, unless you care to, but the court will take it if you designate one or more counts that your verdict was based on those particular counts. Or you may say, we, the jury, find the defendant guilty as charged in the indictment. That covers them all. If you are convinced beyond a reasonable doubt that the defendant is guilty, the form of your verdict will be as I have given it to you. If you are not convinced beyond a reasonable doubt that the defendant is guilty, then, the form of your verdict will be we, the jury, find the defendant not guilty, one of you gentlemen signing it as foreman.

There are some written charges, a great many of them which state the law in some instances better than I have stated it. I take them to be the law, and, for that reason, I am giving to you those which I consider to be proper.

The court thereupon read the written charges to the jury.

WRITTEN CHARGES

8. I charge you Gentlemen of the Jury before you can convict the defendant, C. J. Adams alias Charlie Adams, under Count 1 of said indictment, you must be satisfied beyond a reasonable doubt and to a moral certainty that the said C. J. Adams alias Charlie Adams, did on to wit: [fol. 128] the 10th day of June, 1944, unlawfully and knowingly aid, counsel and abet the said Samuel B. Towns, to unlawfully and knowingly fail and neglect to present himself for and submit to registration at said Local Board No. 1, Dallas County, Alabama.

Given. McDuffie.

14. I charge you Gentlemen of the Jury before you can convict the defendant, C. J. Adams, alias Charlie Adams, under Count 7 of said indictment, you must be satisfied beyond a reasonable doubt and to a moral certainty that said defendant, C. J. Adams alias Charlie Adams, had knowledge of said conspiracy and did conspire with the said Walter Towns and Carrie Lee Towns to aid and assist the said Samuel B. Towns, Samuel C. Towns and John Towns to fail to present themselves for registration at proper time and place as alleged in said indictment.

Given. McDuffie.

21. I charge you Gentlemen of the Jury that before you can convict the defendant, C. J. Adams alias Charlie Adams, under Count 7 of said indictment, you must be satisfied beyond a reasonable doubt and to a moral certainty from the evidence that the said C. J. Adams alias Charlie Adams, had knowledge of a conspiracy and did conspire with the said Walter Towns and Carrie Lee Towns to aid and assist Samuel B. Towns, Samuel C. Towns and John Towns to fail to present themselves for registration at the proper time and place as alleged in said indictment.

Given. McDuffie, J.

28. I charge you Gentlemen of the Jury that before you can convict the defendant, C. J. Adams alias Charlie Adams, under Count 7 of said indictment, you must be satisfied beyond a reasonable doubt and to a moral certainty that the said C. J. Adams alias Charlie Adams, [fol. 129] actually entered into a conspiracy with the said Walter Towns and Carrie Lee Towns with the intended purpose to aid and assist the said Samuel B. Towns, Samuel C. Towns and John Towns to fail to present themselves for registration at the proper time and place as alleged in said indictment.

Given. McDuffie.

34. I charge you Gentlemen of the Jury that before you can convict the defendant, C. J. Adams alias Charlie Adams, under Count 6 of said indictment, you must be satisfied beyond a reasonable doubt and to a moral certainty that the said defendant, C. J. Adams alias Charlie Adams, did on to wit: the 19th day of September, 1944, knowingly aid the said John Towns to unlawfully and

knowingly fail and neglect to present himself for and submit to registration at said Local Board No. 2, in Dallas County, Alabama.

Given. McD.

44. I charge you Gentlemen of the Jury that before you can convict the defendant, C. J. Adams alias Charlie Adams under Count 7 of said indictment, you must believe beyond a reasonable doubt and to a moral certainty that said defendant, C. J. Adams alias Charlie Adams, consciously participated at the time in effectuation of the unlawful purpose.

Given. McDuffie.

Judge McDuffie: I want to know now, gentlemen, if there are any exceptions to the court's oral charge from either side. If you have any exceptions to anything I have said to the jury, I will be glad to hear from you.

Mr. McConnell: The government is completely satisfied with the charge, except that since there are three defendants named in the indictment and two of them are not on trial, I believe the verdict should specify the name of C. J. Adams.

[fol. 130] Judge McDuffie: Yes, Gentlemen, when you write your verdict be sure to write the name C. J. Adams after the defendant. He is the only defendant on trial. The verdict would certainly refer to him. I think you are wise in making the suggestion. Now, Mr. Gayle, have you any exceptions?

Mr. Gayle: No exceptions.

Judge McDuffie: Gentlemen, you are going to be in charge of the deputy marshal, who will wait on you and look after you, and if you cannot reach an agreement at an early hour, he will take you to supper and bring you back and let you work some more. I will be subject to your call if you do reach a verdict. Some of you may want to get away early in the morning. It would be hard on the clerk to wait until midnight, and it might be better to come back tomorrow, for the clerk would have to be here in order to pay you tonight. I guess we had just better not figure on your getting away tonight unless you come to a conclusion quickly. I mean, of course, within a reasonable length of time. Don't hurry about it. You would not want to hurry about it, for you would seriously

consider the evidence presented here. We want to work to your convenience. If you are through, we want to help, but I am not going to ask the deputy clerk to come down here late at night and fix up your mileage and per diem, but if you reach a verdict, rather than have you kept together,—you have to be kept together until your verdict is reached—at any reasonable hour, I will be at the hotel and can be brought down to get it. Now, gentlemen, you twelve men may retire and make up your verdict.

The foregoing constitutes all the evidence that was offered in said case relating to the guilt or innocence of the defendant, of the charge contained in the indictment, or having any bearing upon the rulings of the court, or as may be necessary to present clearly the questions of law involved in the rulings to which exceptions are reserved.

[fol. 131] Comes now C. J. Adams alias Charlie Adams, the defendant in the above entitled cause and presents this, his Bill of Exceptions, to the Honorable John McDuffie, Judge of the United States District Court for the Southern District of Alabama, Northern Division, who presided at the trial of this cause and prays that he settle and duly sign the said Bill of Exceptions before the expiration of the time heretofore fixed for the settlement thereof, and order that same may be duly filed according to law and the rules of this Honorable Court.

C. J. Adams, Defendant, T. G. Gayle, Attorney.

Presented as a true Bill of Exceptions by the Defendant this 14th day of Mch, 1946.

John McDuffie, Judge of the United States District Court for the Southern District of Alabama, Northern Division.

Approved as a true Bill of Exceptions and ordered filed this the 14 day of Mch, 1946.

John McDuffie, Judge of the United States District Court for the Southern District of Alabama, Northern Division.

[File endorsement omitted.]

[fol. 132] IN UNITED STATES DISTRICT COURT

Motion to Transmit Original Exhibits to Circuit Court of Appeals

[Title omitted]

Comes T. G. Gayle, attorney for C. J. Adams alias Charlie Adams, and Albert J. Tully, United States District Attorney for the Southern District of Alabama, Northern Division, and respectfully shows unto your Honor as follows:

That there was offered in evidence U. S. Exhibit 1 certified copy of birth certificate of Mary Peterson, U. S. Exhibit 2 certified copy of birth certificate of Sally Peterson, U. S. Exhibit 3 certified copy of birth certificate of Fed Peterson, U. S. Exhibit 4 birth certificate of Samuel C. Towns, U. S. Exhibit 5 birth certificate of Sammy B. Towns, U. S. Exhibit 6 birth certificate of John Towns, U. S. Exhibit 7 verification of birth record of Isaac Towns, U. S. Exhibit 8 verification of birth record of Isham Towns, U. S. Exhibit 9 form of delayed certificate of birth, U. S. Exhibit 10 supporting document for Sammy B. Towns, U. S. Exhibit 11 supporting document for Samuel C. Towns, U. S. Exhibit 12 supporting document for John Towns, U. S. Exhibit 13 certified copy of certificate of birth of Isaac Towns, U. S. Exhibit 14 certified copy of certificate of birth of Isham Towns, U. S. Exhibit 15, Bible, and it is to the best interest of all parties concerned that the originals of the above named Exhibits be transmitted to the Circuit Court of Appeals and that copies not be incorporated in the transcript of record.

Now, therefore, the said T. G. Gayle, and Albert J. Tully, pray that this Honorable Court will enter an order directing that the originals of the above numbered and named Exhibits be transmitted to the Circuit Court of Appeals and that copies not be incorporated in the transcript of record.

T. G. Gayle, Albert J. Tully.

[fol. 133] *Duly sworn to by T. G. Gayle and Albert J. Tully jurats omitted in printing.*

[fol. 134] IN UNITED STATES DISTRICT COURT

ORDER DIRECTING ORIGINAL EXHIBITS SENT TO CIRCUIT COURT OF APPEALS—Filed March 14, 1946

[Title Omitted]

The attorney, T. G. Gayle for C. J. Adams alias Charlie Adams, and the United States District Attorney for the Southern District of Alabama, Northern Division, having filed their joint motion praying the Court to order the original Exhibits to be transmitted to the Circuit Court of Appeals on the following named and numbered Exhibits, namely:

Exhibit 1 certified copy of birth certificate of Mary Peterson, Exhibit 2 certified copy of birth certificate of Sally Peterson, Exhibit 3, certified copy of birth certificate of Fed Peterson, Exhibit 4 birth certificate of Samuel C. Towns, Exhibit 5 birth certificate of Sammy B. Towns, Exhibit 6 birth certificate of John Towns, Exhibit 7 verification of birth record of Isaac Towns, Exhibit 8 verification of birth record of Isham Towns, Exhibit 9 form of delayed certificate of birth, Exhibit 10 supporting document for Sammy B. Towns, Exhibit 11 supporting document for Samuel C. Towns, Exhibit 12 supporting document for John Towns, Exhibit 13 certified copy of certificate of birth of Isaac Towns, Exhibit 14 certified copy of certificate of birth of Isham Towns, exhibit 15, bible.

It is ordered that the above named original Exhibits shall be hereby transmitted to the Circuit Court of Appeals by the Clerk of the United States District Court for the Southern District of Alabama, Northern Division, and that they not be incorporated in the transcript of record, and that upon conclusion of the appeal they shall be re-[fol. 135] turned to the Clerk of the District Court of the United States for the Southern District of Alabama, Northern Division.

Made this 14th day of March, 1946.

John McDuffie, Judge.

[File endorsement omitted]

Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 136] That thereafter the following proceedings were had in said cause in the United States Circuit Court of Appeals for the Fifth Circuit, viz:

ARGUMENT AND SUBMISSION

Extract from the Minutes of June 3rd, 1946

No. 11521

C. J. ADAMS alias CHARLIE ADAMS,

versus

UNITED STATES OF AMERICA

On this day this cause was called, and, after argument by Thomas Gill Gayle, Esq., for appellant, and Albert J. Tully, Esq., United States Attorney, for appellee, was submitted to the Court.

[fol. 137] OPINION OF THE COURT AND DISSENTING OPINION OF WALLER, CIRCUIT JUDGE—Filed July 9, 1946

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 11521

C. J. ADAMS alias CHARLIE ADAMS, Appellant,

versus

UNITED STATES OF AMERICA, Appellee

Appeal from the District Court of the United States for the Southern District of Alabama

(July 9, 1946)

Before HUTCHESON, WALLER, and LEE, Circuit Judges.

LEE, Circuit Judge: The appellant in this case is by profession a notary public. John Towns and his two brothers, Samuel B. and Samuel C. Towns, who are twins, are sons of Walter Towns and Carrie Lee Towns. The appellant and the parents were indicted on four separate

counts for unlawfully aiding, counseling, and abetting the three sons in failing and neglecting to register under the Selective Training and Service Act and for conspiring together and with the three sons to cause each unlawfully [fol. 138] and knowingly to evade registration under the act by falsely representing that John Towns was born on October 9, 1928, and Samuel B. and Samuel C. Towns, on June 9, 1930. Walter Towns and Carrie Lee Towns entered pleas of guilty. A jury found appellant guilty on all four counts, and appellant received a general sentence of one year and one day in the penitentiary and a fine of $250. Appealing from the sentence thus imposed, appellant presents for our consideration the following questions:

1. Did the evidence warrant a finding that John Towns, Samuel B. and Samuel C. Towns were above the age of 18 years and old enough to register, as alleged in the indictment?

2. Did the evidence warrant a finding that appellant unlawfully and knowingly did aid, counsel, and abet the three brothers in their failure to present themselves for and submit to registration?

3. Did the evidence warrant a finding that appellant entered into a conspiracy with the three brothers and their parents, having for its purpose aiding and abetting the brothers in evasion of the Selective Service Act by failing to register?

4. Did the court err in admitting certain evidence over objection during the trial?

5. Did the court err in refusing to give the jury certain written instructions?

The facts briefly stated are: After Selective Service Local Board No. 2, Dallas County, Alabama, received reports that the three sons had not registered in compliance with the Selective Service Act, on March 21, 1944, it wrote John Towns to report without delay. Several [fol. 139] days later the parents appeared before representatives of the board in place of their son. After this appearance, but on the same day, Carrie Lee Towns called upon appellant to enlist his aid in obtaining delayed birth certificates for her sons. Appellant filled out three applica-

tions for delayed birth certificates and explained to her the need for supporting documentary evidence. The next day she appeared at his office with a "family Bible" containing the names of each of the three children with three alleged dates of birth. Having examined the Bible, appellant set forth in separate certificates the information relating to the birth dates. Later, on the same date, the three sons appeared before him, and each signed an affidavit setting forth the date of his birth as that inscribed in the Bible. Appellant testified that he asked them no questions relative to these dates. All papers prepared, including the certificates of appellant in his capacity as notary, were filed with the state board of health in Montgomery, Alabama. Thereupon, delayed birth certificates were issued and were filed with the Selective Service Board to support the contention that the boys were under the draft age.

Without material contradiction the testimony showed that the twins were born on June 9, 1923, and that John Towns was one or more years older than the twins. When they appeared before appellant, all three, therefore, were above the age of twenty.

The certificate executed by appellant with reference to the family Bible for John Towns reads:

> "I, C. J. Adams, a Notary Public in and for said state and county hereby certify that I have this day examined the Family Bible now in the possession of Carrie Lee Towns which was published by Collins [fol. 140] Clear-Type Press in the year of year not shown and the facts below appear to have been recorded many years ago. The Bible shows John Towns to have been born at Pleasant Hill Ala.; date of birth Oct. 9, 1928; name of father Walter Towns and name of mother Carrie Lee Towns."

The two certificates prepared for the twins were identical with that prepared for John except that in one the name of Samuel B. appeared and in the other the name of Samuel C. appeared, and that the date of birth in these two certificates was given as June 9, 1930. Government agents testified that appellant stated that when he first saw Carrie Lee Towns' three sons in his office in March of 1944 he believed them to be over eighteen years of age.

It was shown that appellant was experienced in matters connected with the Selective Service Act and with the procedure for obtaining delayed birth certificates. His contention that for ought he knew the Towns brothers desired birth certificates to enable them to obtain defense-plant work is meritless because the birth dates set forth would disqualify them for such work. In the light of appellant's experience in having filled out over one thousand papers in connection with the Selective Service Act, the date given in the applications for delayed birth certificates would have informed him that the accompanying certificates executed by him would be used only for the single purpose of evading registration under the Selective Service Act.

No effort was made by appellant to ascertain whether the doctor or midwife in attendance at the birth of the brothers recorded the births with the state board. In view of his knowledge that the state law required births to be registered and that the state authorities issued delayed birth certificates only in the absence of prior recordation, [fol. 141] appellant's failure first to investigate the records of the state board was a circumstance the jury could consider to show guilt.

Appellant certified that the birth dates of the sons "appear to have been recorded many years ago." The Bible itself was published in England and could not there have been lawfully printed and published prior to the issuance of a license for so doing. Although containing no publication date, the Bible did contain, at a place where the publication date would ordinarily be found, the date of the English license, March 10, 1939. The jury could conclude that a reasonable man after inspecting this Bible would not without sinister motives certify that the dates of births "appear to have been recorded many years ago."

To discredit his contention that he knew not why Carrie Lee Towns wanted the delayed birth certificates, the prosecution introduced into evidence appellant's plea of guilty to a previous indictment charging him with falsely certifying, as a notary public, that a person who actually was deceased appeared before him to make a demand for payment, this certificate being later forwarded by appellant to the Veteran's Administration.

The evidence warranted the jury in concluding that appellant knew for what purpose Carrie Lee Towns sought to obtain delayed birth certificates for her three boys and that her affidavits and their affidavits as to the dates of their births were false; that appellant knew the weight under Alabama law of his certificate concerning the age of the family Bible and the authenticity of the record births therein; and that by certifying that the year of publishing was not shown and that the dates "appear to have been recorded many years ago" appellant intended to enable the boys to obtain fallacious delayed birth certificates. Hence, the evidence warranted finding the appellant guilty [fol. 142] of aiding and abetting the three brothers in their failure to present themselves for and submit to registration, and of conspiring with Walter and Carrie Lee Towns and their three sons to enable the latter to evade registration under the Selective Service Act.

The contention that the introduction of volunteered information into the record was reversible error is without merit since the court ordered it stricken. The testimony that appellant frequented the county health office to obtain birth and death certificates was properly admitted to show appellant's knowledge of the services available in that office and to show familiarity with the procedure necessary to obtain delayed birth certificates.

To establish the year of birth of the Towns twins, an aunt, who lived in the same locality and was a sister of their mother, testified that she gave birth to twin girls in December 1923, and that her sister, the mother of the Towns twins, gave birth to twin boys earlier the same year. In corroboration, the Government offered two birth certificates showing the birth in December, 1923, of Mary and Sally Peterson. As the witness had testified that the twin girls were named Reby and Ruby Peterson, the objection was made that the identity of the twins in the birth certificates was not proved. Evidence was introduced to show that the midwife in attendance filed the certificates, that the names and addresses of the parents and midwife were correct on the certificates, and that the witness and her husband had only one set of twins. The Government also offered in evidence certificates showing birth of Isaac and Isham Towns, twin sons, to Walter and Carrie Lee Towns on June 9, 1923. The Government

proved in connection with the offering that Samuel B. and Samuel C. Towns were the only twins born to Walter and Carrie Lee Towns, and that they were born prior to the birth of the Peterson girls in the year 1923. It was [fol. 143] further shown that the midwife who filed the certificates and whose name appeared as such therein was the midwife in attendance at the birth of Samuel B. and Samuel C. Towns. The evidence, we think, properly identified the certificates with the Peterson twins and with the Towns twins. With the foundation thus laid the certificates were properly received in evidence.

Numerous written requested charges were denied, appellant says, to his prejudice. A more favorable charge for appellant could hardly have been given. The record shows that the requested charges either were covered in the court's general charge or were without support in the evidence.

No reversible error appearing, the judgment appealed from is

Affirmed.

WALLER, Circuit Judge, dissenting:

I am unwilling to attach criminal consequences to the act of notarizing a false affidavit in the absence of clear proof that the Notary counselled or procured the making of such an affidavit with knowledge of its falsity. A Notary is not required to vouch for the truth of the affidavits which he takes. He commits no crime in merely administering the oath of another even if he thinks it is false any more than does the Clerk when he swears a witness to a deposition which the Clerk might have reason to believe is false.

The affidavits were prepared by Appellant from information supplied by the mother of the three boys, and were [fol. 144] prepared before Appellant ever saw those affiants. The fact that when they came in the next day to swear to the affidavits their ages appeared to Appellant to be greater than the ages which had been stated did not make him a felon merely because of the fact the he administered the oath to the affiants.

The Government used eighteen witnesses in convincing the jury that the ages of the Towns boys were greater than those stated in their affidavits. Nevertheless, its

attorney urges that Appellant, in face of their affidavits, their mother's statement, and the birth dates written in the ancient-looking Bible, should be deemed a criminal because he did not of his own motion adjudge that the ages stated were false, notwithstanding the fact that the law does not cast upon a Notary this responsibility.

Appellant also made three certificates as to dates of birth appearing in the family Bible, but there is nothing false on the face of those certificates. The Bible was transmitted to this Court as an original exhibit. It has every external appearance of being very old. Dates purporting to show the birthdays of the Towns children are written in it. The date of publication of the Bible is not shown, but tucked away in very fine print is a statement that a license to print it was not issued until 1939. A failure by Appellant to discover this date is thoroughly understandable. Such an oversight could easily and likely occur, and, if so, it should not be characterized as the act of a felon.

He received only $3.00 for: writing six affidavits; making his certificate for each of the three sons; advising the mother as to the requisites to obtain delayed birth certificates; and taking the oaths of the three boys and their mother to those affidavits. This small sum is not sufficient to create the inference that his act was even venal, much less criminal.

[fol. 145] The evidence as to the Appellant's knowledge and intent is entirely circumstantial and signally fails, in the writer's view, to exclude every reasonable hypothesis other than that of Appellant's guilt. This negro may have been guilty of advising the making, and of aiding in the making, of false affidavits, but the evidence leaves too much to the imagination. His acts are as consistent with innocence as they are with guilt. The jury was never instructed that where circumstantial evidence is relied on to prove a material fact in a criminal case the circumstances must be such as to exclude every reasonable hypothesis other than the existence of the fact sought to be proven. But since no request was made for such a charge, and no exception taken to the failure to give such a charge, I would not reverse for this reason. I cite the failure to give such a charge merely as one explanation why the jury may have brought in a verdict of guilty without sufficient support, as I see it, in the evidence. I think the judgment should be reversed.

[fol. 146] JUDGMENT

Extract from the Minutes of July 9th, 1946

No. 11521

C. J. ADAMS alias CHARLIE ADAMS,

versus

UNITED STATES OF AMERICA

This cause came on to be heard on the trancript of the record from the District Court of the United States for the Southern District of Texas, and was argued by counsel;

On consideration whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court appealed from in this cause be, and the same is hereby, affirmed.

"Waller, Circuit Judge, dissents."

[fol. 150] ORDER DENYING REHEARING

Extract from the Minutes of August 5th, 1946

No. 11521

C. J. ADAMS alias CHARLIE ADAMS,

versus

UNITED STATES OF AMERICA

It is ordered by the Court that the petition for rehearing filed in this cause be, and the same is hereby, denied. "Waller, Circuit Judge, dissents."

[fol. 151] CLERK'S CERTIFICATE, UNITED STATES OF AMERICA, UNITED STATES CIRCUIT COURT OF APPEALS, FIFTH CIRCUIT

I, Oakley F. Dodd, Clerk of the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify that the pages numbered from 136 to 150 next preceding this certificate contain full, true and complete copies of all the pleadings, record entries and proceedings, including the opinion of the United States Circuit Court of Appeals for the Fifth Circuit, in a certain cause in said Court, numbered 11521, wherein C. J. Adams alias Charlie Adams, is appellant, and United States of America, is appellee, as full, true and complete as the originals of the same now remain in my office.

I further certify that the pages of the printed record numbered from 1 to 135 are identical with the printed record upon which said cause was heard and decided in the said Circuit Court of Appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of the said United States Circuit Court of Appeals, at my office in the City of New Orleans, Louisiana, in the Fifth Circuit, this 20th day of August, A. D. 1946.

Oakley F. Dodd, Clerk, of the United States Circuit Court of Appeals, Fifth Circuit, By E. V. Vendenig, Deputy Clerk. (Seal.)

[fol. 152]

SUPREME COURT OF THE UNITED STATES,
OCTOBER TERM, 1946

No. 457

ORDER ALLOWING CERTIORARI—Filed October 21, 1946.

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Fifth Circuit is granted, and the case is transferred to the summary docket.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: Enter: John W. Lapsley. File No. 51321, U. S. Circuit Court of Appeals, Fifth Circuit, Term No. 457, C. J. Adams alias Charlie Adams, Petitioner, vs. The United States of America. Petition for writ of certiorari and exhibit thereto. Filed September 4, 1946, Term No. 457 O.T. 1946.

FILE COPY

FILED
SEP 4 1946
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

NO. 457

C. J. ADAMS *alias* CHARLIE ADAMS,
Petitioner,

Vs.

UNITED STATES OF AMERICA,

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT, AND BRIEF IN SUPPORT THEREOF

JOHN W. LAPSLEY,
100 Church Street,
Selma, Alabama,
Counsel for Petitioner.

T. G. GAYLE,
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Selma, Alabama,
of Counsel for Petitioner.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

NO._____

C. J. ADAMS *alias* CHARLIE ADAMS,
Petitioner,

Vs.

UNITED STATES OF AMERICA,

PETITION FOR WRIT OF CERTIORARI

The Petitioner, C. J. Adams alias Charlie Adams, respectfully shows to this Honorable Court:

A.

STATEMENT OF MATTER INVOLVED.

The Petitioner (a negro Notary Public) was indicted with Walter Towns and Carrie Lee Towns (negroes) in the District Court of the United States for the Southern District of Alabama, Northern Division, May Term, 1945, on three counts—Counts 2, 4 and 6 (R. pp. 2-9)—for unlawfully aiding, counseling and abetting John Towns and Samuel B. and Samuel C. Towns (twins), sons of Walter and Carrie Lee Towns, to unlawfully and knowingly fail and neglect to present themselves for registration on September 19, 1944, under the Selective Service and Training Act of 1940, as amended (U. S. Code, Title 50, Appendix Sec. 303-318); and, under Count 7 (R. pp. 9-17), for conspiring together and with said three sons of said co-defendants

to cause said three sons to knowingly and unlawfully evade registration under said Act by falsely pretending that each of said sons was under 18 years of age.

In the conspiracy Count, the only overt acts alleged to have been committed by the Petitioner were:

> (a) the signing by him, as a Notary Public, of a certificate that he had examined a family bible in the possession of Carrie Lee Towns, the mother of said negro boys, which was published by Collins Clear Type Press, in which the year of publication was not shown, which bible showed that each of said sons had been born at Pleasant Hill, Alabama, and showed the date of birth of John Towns as October 9, 1928, and the date of birth of Samuel C. and Samuel B. Towns (the twins) as June 9, 1930, and that the name of the father was Walter Towns and the name of the mother was Carrie Lee Towns; and that said facts appeared to have been recorded many years ago; and
>
> (b) administering the oath or taking the acknowledgments of the three sons and the mother in the affidavits stating the age of each of said sons. (R. pp. 9-17).

It is alleged that such certificate and affidavits were thereafter filed with the Bureau of Vital Statistics, Alabama State Department of Health, for the purpose of obtaining delayed birth certificates for said three sons of said co-defendants.

The co-defendants, parents of the three negro boys, plead guilty to the indictment, and thereafter, on November 7, 1945, the Petitioner, who plead not guilty, was tried before a jury who found him guilty as charged in the indictment. (R. p. 32).

On November 9, 1945, Petitioner was sentenced for one year and a day and fined $250.00.

Petitioner thereupon filed a motion to set aside the verdict and grant a new trial. (R. pp. 34-43), which motion (as amended) was overruled on November 21, 1945. (R. pp. 43-44).

On November 21, 1945, Petitioner took an appeal to the United

States Circuit Court of Appeals for the Fifth Circuit (R. pp. 44-47).

The judgment appealed from was affirmed by the United States Circuit Court of Appeals for the Fifth Circuit on July 9, 1946. (R. p.). Application for rehearing in said cause was denied on August 5, 1946. (R. p.).

The evidence showed that the mother and her three sons were unknown to the Petitioner until their appearance before him on March 23, 24 and 25, 1944, when he was requested to take their acknowledgements to affidavits to be used by them in applying for what are termed under the Alabama law as delayed birth certificates, where no birth certificate was issued at the time of birth. The Appellant in his capacity as Notary Public under the law of the State of Alabama was required to examine the family bible in which the births were registered, if such was the case, and to certify that he had examined such bible, stating the name of the person having possession of the bible, the name of the Publisher of the bible, the year of the publication of the bible, and to state whether, from the appearance of such bible, the date of birth of the child, the place of birth, the name of the father and mother, were recorded many years ago. These facts were so certified to, as provided in the certificate, except that in the blank space in the form of the certificate where it required the year of publication of the bible to be inserted it was stated, "year not shown". The date of the birth of John Towns as recorded in the bible was October 9, 1928, and the date of the birth of the twins, Samuel B. and Samuel C., was recorded as June 9, 1930, and these dates of birth were so stated in affidavits executed by the mother and sons, which affidavits were sworn to before the Petitioner as Notary Public. The evidence on the trial was to the effect that the twins Samuel B. and Samuel C. Towns were born sometime in the year 1923, and that the son John Towns was older than the twin brothers.

Although it was shown that the delayed birth certificates were thereafter obtained by these three boys, and were used by them in attempting to evade registration under the Selective

Service and Training Act, it was not shown that the Petitioner, the Notary Public, had any knowledge at the time of administering the oaths to the affidavits and making his certificate as to the bible record that the facts stated in the affidavits were false or that the records in the bible were untrue. The Petitioner, as a Notary Public, was paid the regular Notary fees for his services, amounting to $3.00, and so far as the evidence shows he had no other connection with the events that later transpired.

There was no direct evidence of any conspiracy on the part of the Petitioner. The bible involved was introduced in evidence and although it had no date of publication therein, examination disclosed that on a second sheet, in print so fine that the Petitioner claimed he could not read it, the date of the issuance of the license for the publication of such bible was stated as March 10, 1939; although Petitioner denied that he noticed such date at the time he examined the bible and made his certificate with reference thereto.

There was no evidence that the Petitioner, the Notary Public, had any knowledge of the fact that the information stated in the affidavits or recorded in the bible was false.

Thereafter the Petitioner testified as a witness for the Government in prosecutions instituted against the Towns boys for attempting to evade the draft, in which said boys were convicted. Subsequent to the conviction of the Towns boys, on June 16, 1945, before the indictment in this case, Petitioner made a written statement to a Special Agent of the Federal Bureau of Investigation with reference to the affidavits made before him and the certificates executed by him, (R. p. 95) which contained no statement as to how old the Towns boys appeared to be in March, 1944 when they appeared before Petitioner to sign their affidavits. However, this Special Agent testified that after he had taken such written statement, the Petitioner made the remark, or stated orally, referring to the Towns boys, that "you *can* look at them and tell they were over 18"; (R. p. 96) and later testified that the words the Petitioner used on that occasion were "you *could* look at them and tell they were over

18". (R. p. 97). On this point there was a conflict as to whether the Petitioner stated 15 or 18 years of age, and whether the Petitioner intended to refer to the time when he took the affidavits or to a later occasion when he saw the Towns boys in Court when he was a witness for the Government.

But for the apparent oversight of Petitioner in failing to discover, in very fine print, the date the license was issued for the printing of the bible, and the construction placed upon what appeared to have been a remark of the Petitioner more than a year afterwards as to the apparent ages of the affiants, when he stated that he paid no particular attention to their apparent ages or any difference between the ages recorded in the bible, and their apparent ages, there would not have been any incidents or circumstances from which the jury could have drawn any inference of guilt on the part of Petitioner. Petitioner insists that these two incidents or circumstances are wholly insufficient to support the verdict in this case; and that the Petitioner should have been given the affirmative charge upon all of the counts of the indictment, or that the verdict should have been set aside, or the Circuit Court should have reversed the judgment of conviction. To support Petitioner's contention, reference is here made to the dissenting opinion by Waller, Circuit Judge. (Appendix A).

B.

STATEMENT OF JURISDICTION.

The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925 (28 U. S. C. Section 347).

This petition is filed within thirty days from August 5, 1946, the date on which the application for rehearing in said cause was denied by the Circuit Court.

C.

THE QUESTIONS PRESENTED.

(1). Whether or not the evidence was sufficient to sustain a conviction of the Petitioner under the indictment.

(2). Whether or not the evidence was sufficient to sustain a conviction of the Petitioner under Counts 2, 4 and 6.

(3). Whether or not the evidence was sufficient to sustain a conviction of the Petitioner under Count 7. (The conspiracy count).

(4). Whether or not the action of the trial Court in submitting this case to the jury and the action of the Circuit Court in affirming the conviction of the Petitioner without sufficient supporting evidence constitute a denial of the due process of law guaranteed to him under the Fifth Amendment to the Constitution of the United States.

D.

REASONS RELIED ON FOR ALLOWANCE OF THE WRIT.

Appellant insists that an examination of the record in this cause will reveal the fact of the entire absence of any proof of conspiracy, or of any fact or circumstance, from which guilt might be inferred, which is not equally consistent with the complete innocence of the Petitioner, whose only acts were performed as an official of the State of Alabama, acting in a ministerial capacity in administering the oath to affiants and acting in a judicial or quasi judicial capacity in examining and certifying to the results of the examination of the family bible presented to him for such purpose. Petitioner, therefore, insists that conviction under the circumstances of this case, and the construction followed in the majority opinion of the Circuit Court constitute such a departure from the accepted and usual course of judicial proceedings or so far sanction such a de-

parture by the District Court, as to call for an exercise of this Court's power of supervision.

It is of public concern that officials acting in a ministerial capacity should not be held criminally responsible for the truthfulness of the contents of affidavits or statements made under oath to such officers. It is contrary to public policy and against the interests of the public to subject a judicial officer to criminal liability for acts done in the performance of his judicial duties, even though negligent or erroneous.

(Brief in support of this petition is hereto annexed).

D.

PRAYER FOR THE WRIT.

Wherefore your Petitioner prays that a writ of certiorari issue out of and under seal of this Honorable Court directed to the United States Circuit Court of Appeals for the Fifth Circuit commanding that Court to certify and send to this Court for a review and determination, for a day set therein named, a full and complete transcript of the record and all proceedings in the cause numbered and titled Docket No. 11521, C. J. Adams alias Charlie Adams, Appellant, v. United States of America, Appellee, and that judgment therein rendered by said Circuit Court may be reviewed by this Honorable Court; and that your Petitioner may have such other or further relief in the premises as unto this Honorable Court may seem meet and just; and your Petitioner will ever pray.

JOHN W. LAPSLEY,
Counsel for Petitioner.

T. G. GAYLE,
Of Counsel for Petitioner.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

NO._____

C. J. ADAMS *alias* CHARLIE ADAMS,
Petitioner,

Vs.

UNITED STATES OF AMERICA,

BRIEF OF PETITIONER IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

I.

OPINIONS BELOW

The opinion of the majority and the dissenting opinion of the United States Circuit Court of Appeals for the Fifth Circuit were rendered on July 9, 1946, and appear as Appendix A hereto.

II.

JURISDICTION

1. Statutory jurisdiction for this petition is founded upon the provisions of Section 240 of the Judicial Code, as amended by Act of Congress of February 13, 1925, (28 U. S. C. A. Sec. 347).

2. The date of judgment of the United States Circuit Court

of Appeals for the Fifth Circuit affirming the judgment of the trial Court was rendered on July 9, 1946; and an application for rehearing in said cause was denied by the Circuit Court on August 5, 1946 (R. p.); and this petition is filed within thirty days from the final judgment of the Circuit Court denying application for rehearing in said cause.

III.

STATEMENT OF THE CASE

Reference is here made to the statement of the matter involved as set forth in the foregoing petition.

There was an entire absence of any evidence showing or attempting to show that petitioner in any way unlawfully aided, counseled or abetted the three Towns boys in failing or neglecting to register under the Selective Service and Training Act on September 19, 1944, as charged in Counts 2, 4 and 6 of indictment.

The only acts performed by the Petitioner were done by him in his official capacity as Notary Public on March 23, 24 and 25, 1944, and consisted in (a) administering oaths to the mother and her three sons, in taking their affidavits to be submitted by them to the Bureau of Vital Statistics of the State Department of Public Health for the purpose of obtaining what are referred to as "delayed" birth certificates; and (b) examining and certifying to certain facts relating to the records of such births, as shown by the family bible presented to such officer, including the appearance and date of publication of such bible.

Count 7 of the indictment charged the Petitioner and others with a conspiracy to aid the Towns boys to evade compliance with the Selective Service and Training Act.

The Towns boys and their parents were shown to have been strangers to Petitioner prior to the occasion of taking the affidavits and making the certificate to the State in connection therewith. Petitioner was paid the customary Notary's fees, aggregating $3.00. These official acts on the part of Petitioner were his only connection with the events alleged as constituting, on the part of the Towns boys and their parents, an attempt to evade the provisions of the Selective Service and Training Act.

It is not alleged in the indictment that the certificate made by the Petitioner was false in any respect, nor was it proved on the trial that any statement therein made by the Petitioner was

false; nor was it shown that the attention of he officer was called to the date of license issued for the printing of the bible, which appeared in very fine print on the second or inside page of the bible. (See discussion of this point in the dissenting opinion by Waller, Circuit Judge, Appendix A).

On June 16, 1945, after Petitioner had appeared as a witness for the Government in the prosecution of the Towns boys for evading registration, a written statement was obtained from him by a Special Agent of the Federal Bureau of Investigation with reference to acts done by him in taking the acknowledgments and making the certificate in reference to the bible (R. p. 95). In this written statement it was not shown whether the Petitioner at the time of taking the acknowledgments and making the certificate noticed any difference between their ages as indicated in the Bible record and as might have been indicated to him from their appearance, or whether he knew at that time the purpose of obtaining the delayed birth certificates. The Special Agent in testifying for the Government stated that Petitioner said when the Towns boys walked in "you could look at them and tell they were over 18". (R. p. 94). When asked to state the exact words used by the Petitioner the witness stated he said: "you *can* look at them and tell they were over 18." (R. p. 96). This same witness again in two instances stated that the Petitioner said, "you *could* look at them and tell they were over 18." (R. p. 97). H. L. Dickerson, Chief of Police of the City of Selma, testified for the Government that he was present at the time these statements were made by Petitioner to the F. B. I. Agent, and that in replying to an inquiry as to the appearance of the Towns boys and how old Petitioner thought they were, he said he thought they looked like they were over 18 years in his opinion. (R. 97-98). This testimony was contradicted by Petitioner, who testified that he told the F. B. I. Agent that in his opinion the Towns boys were over 15 years of age on the date they appeared before him in March, 1944, but Petitioner explained that such opinion was not formed by him until afterwards when he saw these boys at the time of their trial on a charge of evading the Selective Service and Training

Act, in which case Petitioner had testified for the Government.

Petitioner insists that he has been done a grave injustice; first, in the submission of the case to the jury under such circumstances; and, secondly, that the District Court and the Circuit Court erred in not having ordered the verdict set aside as being unsupported by the evidence.

IV.

ASSIGNMENT OF ERRORS.

1. The Court below erred in affirming the judgment of the trial Court.

2. The Court below erred in not holding the evidence was wholly insufficient to support the verdict of the jury or the judgment of conviction entered thereon by the District Court .

V.

ARGUMENT

Point I.

The Petitioner, as a Notary Public, in administering the oath to affiants, in taking their affidavits, was performing a ministerial act; and the officer did not certify to the truthfulness of the contents of the affidavits.

We are not aware of any decision that an officer in administering an oath under such circumstances becomes civilly or criminally responsible for the truthfulness of the contents of the affiant. Any other rule would jeopardize or imperil the officer and hinder his performance of necessary duties required in the public interest. It is for this reason the duties of the officer do not require him to ascribe to or pass upon the truth or falsity of the statement contained in an affidavit. The falsity of a statement contained in an affidavit, without more, does not constitute a circumstance which would support an inference of guilt against the officer. (See dissenting opinion by Waller, Circuit Judge, Appendix A)

In the instance herein involved, it was not shown that the officer knew that the dates of the births of affiants as therein stated were untrue, but to the contrary he had the assurance of the mother and the Bible record that the dates were correct. The officer at the time may have thought that the boys appeared to be older than their dates of birth indicated, but it was not incumbent upon him to take issue with the mother or to dispute the bible record. The appearance of the boys or their apparent ages were not discussed, and he apparently gave no thought thereto until sometime afterwards, when he saw the boys at their trial, in which case he appeared as a witness for the Government. Later, on June 16, 1945, when questioned by the F. B. I. Agent as to how old the boys appeared to him to be, he expressed an opinion. Petitioner contends that his statement was to the effect that they appeared to be over 15 years of age,

although the F. B. I. Agent testified that his statement was "you can look at them and tell they were over 18" or "you could look at them and tell they were over 18". This statement made more than one year afterwards related his impression of a past transaction. Petitioner was not then charged with committing any offense. It was no confession of guilt on his part. It was not an admission of conspiracy. It was an attempt honestly to convey his impression of a past transaction. After he learned that the statement in the affidavits and the record in the bible were false, he was in sympathy with the prosecution of the guilty parties, as indicated in his answer.

POINT II.

Petitioner as a Notary Public in making the certificate in reference to the examination of the family Bible and his findings therefrom was acting in a judicial or quasi judicial capacity.

Orendorff v. Suit, 52 So. 744; 167 Ala. 563.

Byrd v. Bailey, 53 So. 773, 169 Ala. 452.

Moore v. Bragg, 103 So. 452, 212 Ala. 481.

It is not alleged in the indictment that the facts contained in the certificates made by the Petitioner were false, nor was it shown by the testimony that any statement made in the certificate was false. It is true that in the certificate as to the date of the bible the Petitioner finding no date therein inserted in the blank space the words "year not shown". Although on the second page, in very fine print, there appeared a statement to the effect that a license to print such bible had been issued in 1939. There was no proof that Petitioner saw or read the date of the license, and the circumstances do not show that he was remiss in having failed to discover such date.

An officer in performance of a judicial function is not liable for any error or mistake in judgment. (*Williams vs. Weaver*, 100 U. S. 547).

The primary purpose of the rule exempting public officers from actions for damage in the performance of a public duty is to secure a fearless administration of the law. (*Booth v. Fletcher*, 101 Fed. 667, Certiorari denied 307 U. S. 628).

It has been held that the interest of the public requires that certain protections be accorded to public officials in the performance of their official acts. (*Cooper vs. O'Connor*, 105 F. 2d 761).

It would be contrary to these well recognized rules and against public interest to hold the officer liable civilly or criminally because (a) the contents of an affidavit was later found to be false; or (b) in making the examination and certificate in reference to the bible the officer did not discover the date the license was issued to the publisher for the publication of the Bible. For these reasons, such incidents standing alone may not support an inference of guilt.

It should be remembered that the Notary on this occasion was not required or permitted to express any opinion of his own as to the ages of the Towns boys. Furthermore, there is no proof or presumption that the birth certificates would not have been issued as they were even if the officer had found and inserted in the certificate the year 1939 as the date the bible was published or licensed to be published. It is common knowledge that families often purchase bibles in which they record the names and dates of births of their children, even though born before the date of publication. The form of the State's certificate recognizes such fact. That the Bible had an appearance of age, was not disputed.

Point III.

The evidence is insufficient to support the verdict, and the Court below erred in not reversing the judgment rendered by the trial Court.

Petitioner feels that there has been a miscarriage of justice.

This may partly be accounted for by the fact the Town boys, aided by their parents, were found to be guilty of an attempt to evade a patriotic service to their country. The jurors apparently had a deep seated patriotism in November, 1945, upon the trial of this case, which seems to have engendered a prejudice against Petitioner, a negro Notary Public. This prejudice may have unconsciously affected the judgment of the jurors, in their desire to make a public example by punishing everyone who performed the slightest act in connection with the transaction. Surely, such a prejudice wher found to exist should be corrected by our Courts in order to maintain the proper respect for the judiciary, and to protect the rights guaranteed to Petitioner under the Constitution. Unless the judgment in this cause is reversed it appears that Petitioner will have been denied the full protection of his Constitutional rights, contrary to the settled rules approved by this Court not to permit a verdict to stand which is palpably contrary to the evidence.

CONCLUSION

It is respectfully submitted that the facts and circumstances of this case are such that the records of the proceeding therein should be reviewed by this Court to avoid a grave miscarriage of justice, apparently the result of a prejudice arising from an intense patriotism on the part of the jurors; and to correct an erroneous construction of criminal responsibility arising from the performance by an official of ministerial or judicial acts in rendering necessary services to the public.

Respectfully submitted,

JOHN W. LAPSLEY,
100 Church Street,
Selma, Alabama,
Counsel for Petitioner.

T. G. GAYLE,
1104½ Water Avenue,
Selma, Alabama,
Of Counsel for Petitioner.

CERTIFICATE

I hereby certify that I have this day mailed a copy of the foregoing petition and brief to Albert J. Tully, Esquire, United States District Attorney, Mobile, Alabama, attorney of record for Respondent.

This the 31st day of August, 1946.

JOHN W. LAPSLEY,
Counsel for Appellant.

APPENDIX A

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE FIFTH CIRCUIT.

NO. 11521

C. J. ADAMS *alias* CHARLIE ADAMS,
Appellant,

Vs.

UNITED STATES OF AMERICA,
Appellee.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ALABAMA.

(July 9, 1946.)

Before HUTCHESON, WALLER, and LEE, Circuit Judges.

LEE, Circuit Judge: The appellant in this case is by profession a notary public. John Towns and his two brothers, Samuel B. and Samuel C. Towns, who are twins, are sons of Walter Towns and Carrie Lee Towns. The appellant and the parents were indicted on four separate counts for unlawfully aiding, counseling, and abetting the three sons in failing and neglecting to register under the Selective Training and Service Act and for conspiring together and with the three sons to cause each unlawfully and knowingly to evade registration under the act

by falsely representing that John Towns was born on October 9, 1928, and Samuel B. and Samuel C. Towns, on June 9, 1930. Walter Towns and Carrie Lee Towns entered pleas of guilty. A jury found appellant guilty on all four counts, and appellant received a general sentence of one year and one day in the penitentiary and a fine of $250. Appealing from the sentence thus imposed, appellant presents for our consideration the following questions:

1. Did the evidence warrant a finding that John Towns, Samuel B. and Samuel C. Towns were above the age of 18 years and old enough to register, as alleged in the indictment?

2. Did the evidence warrant a finding that appellant unlawfully and knowingly did aid, counsel, and abet the three brothers in their failure to present themselves for and submit to registration?

3. Did the evidence warrant a finding that appellant entered into a conspiracy with the three brothers and their parents, having for its purpose aiding and abetting the brothers in evasion of the Selective Service Act by failing to register?

4. Did the court err in admitting certain evidence over objection during the trial?

5. Did the court err in refusing to give the jury certain written instructions?

The facts briefly stated are: After Selective Service Local Board No. 2, Dallas County, Alabama, received reports that the three sons had not registered in compliance with the Selective Service Act, on March 21, 1944, it wrote John Towns to report without delay. Several days later the parents appeared before representatives of the board in place of their son. After this appearance, but on the same day, Carrie Lee Towns called upon appellant to enlist his aid in obtaining delayed birth certificates for her sons. Appellant filled out three applications for delayed birth certificates and explained to her the need for sup-

porting documentary evidence. The next day she appeared at his office with a "family Bible" containing the names of each of the three children with three alleged dates of birth. Having examined the Bible, appellant set forth in separate certificates the information relating to the birth dates. Later, on the same date, the three sons appeared before him, and each signed an affidavit setting forth the date of his birth as that inscribed in the Bible. Appellant testified that he asked them no questions relative to these dates. All papers prepared, including the certificates of appellant in his capacity as notary, were filed with the state board of health in Montgomery, Alabama. Thereupon, delayed birth certificates were issued and were filed with the Selective Service Board to support the contention that the boys were under the draft age.

Without material contradiction the testimony showed that the twins were born on June 9, 1923, and that John Towns was one or more years older than the twins. When they appeared before appellant, all three, therefore, were above the age of twenty.

The certificate executed by appellant with reference to the family Bible for John Towns reads:

> "I, C. J. Adams, a Notary Public in and for said state and county hereby certify that I have this day examined the Family Bible now in the possession of Carrie Lee Towns which was published by Collins Clear-Type Press in the year of year not shown and the facts below appear to have been recorded many years ago. The Bible shows John Towns to have been born at Pleasant Hill, Ala.; date of birth Oct. 9, 1928; name of father Walter Towns and name of mother Carrie Lee Towns."

The two certificates prepared for the twins were identical with that prepared for John except that in one the name of Samuel B. appeared and in the other the name of Samuel C. appeared, and that the date of birth in these two certificates was given as June 9, 1930. Government agents testified that

appellant stated that when he first saw Carrie Lee Towns' three sons in his office in March of 1944 he believed them to be over eighteen years of age.

It was shown that appellant was experienced in matters connected with the Selective Service Act and with the procedure for obtaining delayed birth certificates. His contention that for ought he knew the Towns brothers desired birth certificates to enable them to obtain defense-plant work is meritless because the birth dates set forth would disqualify them for such work. In the light of appellant's experience in having filled out over one thousand papers in connection with the Selective Service Act, the date given in the applications for delayed birth certificates would have informed him that the accompanying certificates executed by him would be used only for the single purpose of evading registration under the Selective Service Act.

No effort was made by appellant to ascertain whether the doctor or midwife in attendance at the birth of the brothers recorded the births with the state board. In view of his knowledge that the state law required births to be registered and that the state authorities issued delayed birth certificates only in the absence of prior recordation, appellant's failure first to investigate the records of the state board was a circumstance the jury could consider to show guilt.

Appellant certified that the birth dates of the sons "appear to have been recorded many years ago." The Bible itself was published in England and could not there have been lawfully printed and published prior to the issuance of a license for so doing. Although containing no publication date, the Bible did contain, at a place where the publication date would ordinarily be found, the date of the English license, March 10, 1939. The jury could conclude that a reasonable man after inspecting this Bible would not without sinister motives certify that the dates of births "appear to have been recorded many years ago."

To discredit his contention that he knew not why Carrie Lee Towns wanted the delayed birth certificates, the prosecution

introduced into evidence appellant's plea of guilty to a previous indictment charging him with falsely certifying, as a notary public, that a person who actually was deceased appeared before him to make a demand for payment, this certificate being later forwarded by appellant to the Veteran's Administration.

The evidence warranted the jury in concluding that appellant knew for what purpose Carrie Lee Towns sought to obtain delayed birth certificates for her three boys and that her affidavits and their affidavits as to the dates of their births were false; that appellant knew the weight under Alabama law of his certificate concerning the age of the family Bible and the authenticity of the record births therein; and that by certifying that the year of publishing was not shown and that the dates "appear to have been recorded many years ago" appellant intended to enable the boys to obtain fallacious delayed birth certificates. Hence, the evidence warranted finding the appellant guilty of aiding and abetting the three brothers in their failure to present themselves for and submit to registration, and of conspiring with Walter and Carrie Lee Towns and their three sons to enable the latter to evade registration under the Selective Service Act.

The contention that the introduction of volunteered information into the record was reversible error is without merit since the court ordered it stricken. The testimony that appellant frequented the county health office to obtain birth and death certificates was properly admitted to show appellant's knowledge of the services available in that office and to show familiarity with the procedure necessary to obtain delayed birth certificates.

To establish the year of birth of the Towns twins, an aunt, who lived in the same locality and was a sister of their mother, testified that she gave birth to twin girls in December, 1923, and that her sister, the mother of the Towns twins, gave birth to twin boys earlier the same year. In corroboration, the Government offered two birth certificates showing the birth in December, 1923, of Mary and Sally Peterson. As the witness had

testified that the twin girls were named Reby and Ruby Peterson, the objection was made that the identity of the twins in the birth certificates was not proved. Evidence was introduced to show that the midwife in attendance filed the certificates, that the names and addresses of the parents and midwife were correct on the certificates, and that the witness and her husband had only one set of twins. The Government also offered in evidence certificates showing birth of Isaac and Isham Towns, twin sons, to Walter and Carrie Lee Towns on June 9, 1923. The Government proved in connection with the offering that Samuel B. and Samuel C. Towns were the only twins born to Walter and Carrie Lee Towns, and that they were born prior to the birth of the Peterson girls in the year 1923. It was further shown that the midwife who filed the certificates and whose name appeared as such therein was the midwife in attendance at the birth of Samuel B. and Samuel C. Towns. The evidence, we think, properly identified the certificates with the Peterson twins and with the Towns twins. With the foundation thus laid the certificates were properly received in evidence.

Numerous written requested charges were denied, appellant says, to his prejudice. A more favorable charge for appellant could hardly have been given. The record shows that the requested charges either were covered in the court's general charge or were without support in the evidence.

No reversible error appearing, the judgment appealed from is

AFFIRMED.

WALLER, Circuit Judge, dissenting:

I am unwilling to attach criminal consequences to the act of notarizing a false affidavit in the absence of clear proof that the Notary counselled or procured the making of such an affidavit with knowledge of its falsity. A Notary is not required to vouch for the truth of the affidavits which he takes. He commits no crime in merely administering the oath of another even if he thinks it is false any more than does the Clerk when

he swears a witness to a deposition which the Clerk might have reason to believe is false.

The affidavits were prepared by Appellant from information supplied by the mother of the three boys, and were prepared before Appellant ever saw those affiants. The fact that when they came in the next day to swear to the affidavits their ages appeared to Appellant to be greater than the ages which had been stated did not make him a felon merely because of the fact that he administered the oath to the affiants.

The Government used eighteen witnesses in convincing the jury that the ages of the Towns boys were greater than those stated in their affidavits. Nevertheless, its attorney urges that Appellant, in face of their affidavits, their mother's statement, and the birth dates written in the ancient-looking Bible, should be deemed a criminal because he did not of his own motion adjudge that the ages stated were false, notwithstanding the fact that the law does not cast upon a Notary this responsibility.

Appellant also made three certificates as to dates of birth appearing in the family Bible, but there is nothing false on the face of those certificates. The Bible was transmitted to this Court as an original exhibit. It has every external appearance of being very old. Dates purporting to show the birthdays of the Towns children are written in it. The date of publication of the Bible is not shown, but tucked away in very fine print is a statement that a license to print it was not issued until 1939. A failure by Appellant to discover this date is thoroughly understandable. Such an oversight could easily and likely occur, and, if so, it should not be characterized as the act of a felon.

He received only $3.00 for: writing six affidavits; making his certificate for each of the three sons; advising the mother as to the requisites to obtain delayed birth certificates; and taking the oaths of the three boys and their mother to those affidavits. This small sum is not sufficient to create the inference that his act was even venal, much less criminal.

The evidence as to the Appellant's knowledge and intent is

entirely circumstantial and signally fails, in the writer's view, to exclude every reasonable hypothesis other than that of Appellant's guilt. This negro may have been guilty of advising the making, and of aiding in the making, of false affidavits, but the evidence leaves too much to the imagination. His acts are as consistent with innocence as they are with guilt. The jury was never instructed that where circumstantial evidence is relied on to prove a material fact in a criminal case the circumstances must be such as to exclude every reasonable hypothesis other than the existence of the fact sought to be proven. But since no request was made for such a charge, and no exception taken to the failure to give such a charge, I would not reverse for this reason. I cite the failure to give such a charge merely as one explanation why the jury may have brought in a verdict of guilty without sufficient support, as I see it, in the evidence. I think the judgment should be reversed.

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No. 457

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

C. J. ADAMS *alias* CHARLIE ADAMS,
Petitioner,

v.

UNITED STATES OF AMERICA,

BRIEF FOR PETITIONER

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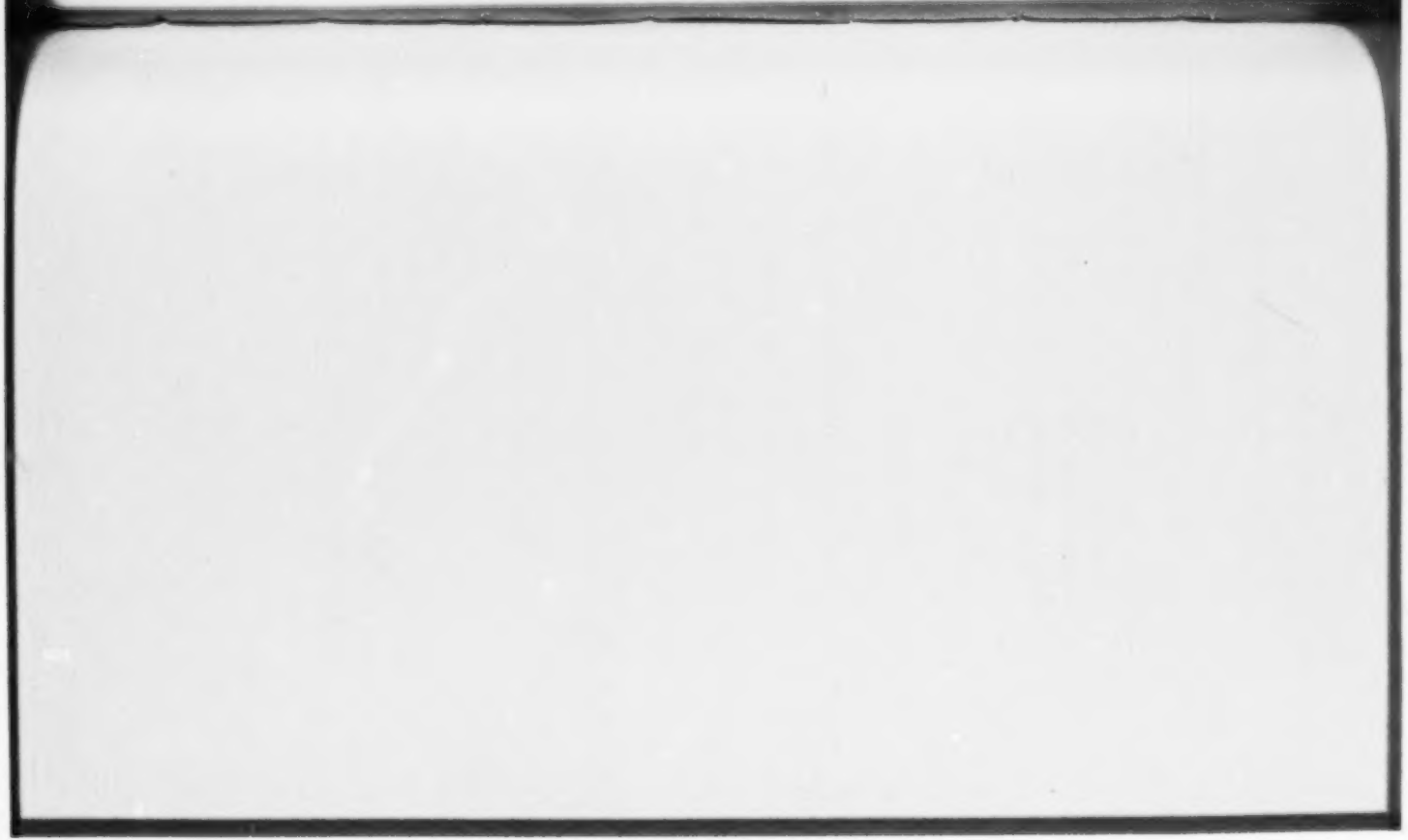

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No. 457

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

C. J. ADAMS *alias* CHARLIE ADAMS,
Petitioner,

v.

UNITED STATES OF AMERICA,

BRIEF FOR PETITIONER

THE OPINIONS OF THE COURT BELOW

The majority and dissenting opinions of the Circut Court of Appeals for the Fifth Circuit are reported in 156 Federal (2d) page 271, Advance Sheets. Copies of such opinions are appended to the petition for the writ of certiorari, (Page 18-25): and also appear in the record. (R. 136-142). No opinion was rendered in this case by the District Court.

STATEMENT OF JURISDICTION

The jurisdiction of this Court arises under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925 (28 U. S. C. Section 347). The judgment of the Circuit Court also rendered on the 9th day of July, October 1946, (R. 143) application for rehearing therein was denied by the Circuit Court on the 5th day of August, 1946, (R. 147). Certiorari was granted by this Court on October 21st, 1946.

STATEMENT OF THE CASE

The Petitioner (a negro Notary Public) was indicted with Walter Towns and Carrie Lee Towns (Negroes) in the District Court of the United States for the Southern District of Alabama, Northern Division, May Term, 1945, on three counts—Counts 2, 4 and 6 (R. pp. 2-9)—for unlawfully aiding, counseling and abetting John Towns and Samuel B. and Samuel C. Towns (twins), sons of Walter and Carrie Lee Towns, to unlawfully and knowingly fail and neglect to present themselves for registration on September 19, 1944, under the Selective Service and Training Act of 1940, as amended (U. S. Code, Title 50, Appendix Sec. 303-318); and, under Count 7 (R. pp. 9-17), for conspiring together and with said three sons of said co-defendants to cause said three sons to knowingly and unlawfully evade registration under said Act by falsely pretending that each of said sons was under 18 years of age.

In the conspiracy Count, the only overt acts alleged to have been committed by the Petitioner were:

> (a) the signing by him, as a Notary Public, of a certificate that he had examined a family Bible in the possession of Carrie Lee Towns, the mother of said Negro boys, which was published by Collins Clear Type Press, in which the year of publication was not shown, which Bible showed that each of said sons had been born at Pleasant Hill, Alabama, and showed the date of birth of John Towns as October 9, 1928, and the date of birth of Samuel C. and Samuel B. Towns (the twins) as June 9, 1930, and that the name of the father was Walter Towns and the name of the mother was Carrie Lee Towns; and that said facts appeared to have been recorded many years ago; and
>
> (b) administering the oath or taking the acknowledgments of the three sons and the mother in the affidavits stating the age of each of said sons. (R. pp. 9-17).

It is alleged that such certificate and affidavits were thereafter filed with the Bureau of Vital Statistics, Alabama State

Department of Health, for the purpose of obtaining delayed birth certificates for said three sons of said co-defendants.

The co-defendants, parents of the three Negro boys, plead guilty to the indictment, and thereafter, on November 7, 1945, the Petitioner, who plead not guilty, was tried before a jury who found him guilty as charged in the indictment. (R. p. 32).

On November 9, 1945, Petitioner was sentenced for one year and a day and fined $250.00

Petitioner thereupon filed a motion to set aside the verdict and grant a new trial. (R. pp. 34-43), which motion (as amended) was overruled on November 21, 1945. (R. pp. 43-44).

On November 21, 1945, Petitioner took an appeal to the United States Circuit Court of Appeals for the Fifth Circuit (R. pp. 44-47).

The judgment appealed from was affirmed by the United States Circuit Court of Appeals for the Fifth Circuit on July 9, 1946 (R. pp. 143). Application for rehearing in said cause was denied on August 5, 1946 (R. pp. 147).

The evidence showed that Carrie Lee Towns, the mother, and her three sons, John, Samuel B. and Samuel C. Towns appeared before the Petitioner as a Notary Public for the purpose of making affidavits as to the dates of birth of the Towns boys. The mother first came to see Petitioner on March 23rd, 1944, (R. 111). On the first day of her visit on March 23rd, 1944, she filled out the affidavits relating to her son John; and came back on March 24th when she filled out the affidavits relating to the twins, Samuel B. and Samuel C. Towns. The Towns boys came in and executed their affidavits before the Petitioner as a Notary Public on March 25th, 1944 (R. 111). The family Bible in the possession of Carrie Lee Towns was presented to the Petitioner as a Notary Public on March 23rd, 1944, for his examination and to obtain a certificate from Petitioner as a Notary Public with reference to his examination of the Bible and the record of the dates of birth therein (R. 14). The affidavit of Carrie Lee Towns with reference to John Towns was

executed March 23rd, 1944 (R. 13). The affidavit of Carrie Lee Towns with reference to Samuel B. and Samuel C. Towns was executed March 24th, 1944 (R. 13). The affidavits and the notary's certificate relating to the Bible and the record therein were executed in connection with an application to the Bureau of Vital Statistics, State Health Department of the State of Alabama, for the issuance of what are termed as "delayed birth certificates" where no birth certificate was issued at the time of birth, pursuant to the provisions of Section 39, Title 22, Code of Alabama of 1940, as amended by general acts of Alabama of 1943, page 463.

The certificate executed by Petitioner as a Notary Public reads as follows:

> "I, C. J. Adams, a Notary Public in and for said state and county hereby certify that I have this day examined the Family Bible now in the possession of Carrie Lee Towns which was published by Collins (fol. 140) Clear-Type Press in the year of year not shown and the facts below appear to have been recorded many years ago. The Bible shows John Towns to have been born at Pleasant Hill, Ala.; date of birth Oct. 9, 1928; name of father Walter Towns and name of mother Carrie Lee Towns."

In the blank space in which the year of publication of the Bible was to be inserted, the Petitioner inserted the words "year not shown". Upon the trial it is shown that the Bible though not containing a date of publication, on the second page, in very fine print, showed that the license for the publication of the Bible was issued in the year 1939, February 13, 1939, or March 10, 1939. This appeared in such small print that many people could not have read it without enlargement (R. 99, 110, 142).

The Petitioner testified that he looked for the date of publication in the Bible but did not see any date, and did not discover the date of the issuance of the license appearing on the second page in such fine print and therefore inserted in the certificate the words "year not shown" (R. 110).

The date of the birth of John Towns as stated in the affidavits and as recorded in the Bible was October 9th, 1928. The date of the birth of the twins Samuel B. and Samuel C. Towns as stated in the affidavits and as recorded in the Bible was June 9th, 1930 (R. 14, 15). On the trial it was shown that the twins, Samuel B. and Samuel C. Towns were born some time in 1923 (R. 74) and that John Towns was older than the twins but the correct date of his birth was not shown.

Although it was shown that the delayed birth certificates were thereafter obtained by these three boys, and were used by them in attempting to evade registration under the Selective Service and Training Act, it was not shown that the Petitioner, the Notary Public, had any knowledge at the time of administering the oaths to the affidavits and making his certificate as to the Bible record that the facts stated in the affidavits were false or that the records in the Bible were unture.

The evidence shows that Petitioner had no previous acquaintance with the mother, Carrie Lee Towns, beyond the taking of her acknowledgment to an affidavit made by her before him as a Notary in February 1944 (R. 112, 113), but which affidavit is not questioned in this case. The three Towns boys were unknown to Petitioner previous to the time they appeared before him to sign and swear to their affidavits on March 24, 1944.

The Petitioner, as a Notary Public, was paid the regular Notary fees for his services, amounting to $3.00, and so far as the evidence shows he had no other connection with the events that later transpired.

There was no direct evidence of any criminal act or conspiracy on the part of the Petitioner.

There was no evidence that the Petitioner, the Notary Public, had any knowledge of the fact that the informaton stated in the affidavits or recorded in the Bible was false.

Thereafter the Petitioner testified as a witness for the Government in prosecutions instituted against the Towns boys for attempting to evade the draft, in which said boys were con-

victed. Subsequent to the conviction of the Towns boys, o June 16, 1945, before the indictment in this case, Petitione made a written statement to a Special Agent of the Federal Bu reau of Investigation with reference to the affidavits made be fore him and the certificates executed by him, (R. p. 95) whic contained no statement as to how old the Towns boys appeare to be in March, 1944 when they appeared before Petitioner t sign their affidavits. However, this Special Agent testifie that after he had taken such written statement, the Petitione made the remark, or stated orally, referring to the Towns boy that "you *can* look at them and tell they were over 18"; (R. p 96) and later testified that the words the Petitioner used o that occasion were "you *could* look at them and tell they wer over 18" (R. 97). H. L. Dickerson, Chief of Police of the City o Selma, testified for the Government that he was present at th time these statements were made by Petitioner to the F. B. I Agent, and that in replying to an inquiry as to the appearanc of the Towns boys and how old Petitioner thought they were he said he thought they looked like they were over 18 years i his opinion. (R. 97-98). This testimony was contradicted b Petitioner, who testified that he told the F. B. I. Agent that i his opinion the Towns boys were over 15 years of age on th date they appeared before him in March, 1944, but Petitione explained that such opinion was not formed by him until after wards when he saw these boys at the time of their trial on charge of evading the Selective Service and Training Act, i which case Petitioner had testified for the Government.

There was no direct evidence tending to show that the Peti tioner was guilty of aiding or abetting the Towns boys in failin or neglecting to register under the Selective Service Act, o that he conspired with anyone to evade the registration of th Towns boys pursuant to such act.

It was shown that the Petitioner had been convicted of a prio offense (R. 106, 117, 137), involving a charge that Petitione as a Notary Public had made a false certificate in connectio with a claim presented to the Veterans Administration for th payment of money. Evidence of this prior conviction was ad

missable for the purpose of impeaching the Petitioner as a witness but the trial Court charged the jury that it should also be considered by them for the purpose of determining the Petitioner's guilty knowledge in the case at bar (R. 125).

In order to obtain the delayed birth certificate it was necessary for the applicants to submit to the State Health Department supporting proof from two documents not less than one year old. (See Appendix)

One of the supporting documents was the family Bible submitted to the Petitioner as a Notary Public for his examination. The other documentary proof submitted by applicants to the State was a baptismal record from Good Hope Church, Pleasant Hill, Alabama, signed by Cleveland McBride, Custodian of such records. (R. 77, 79). The baptismal record was certified on March 24, 1944 (R. 79). The certificate as to the baptismal records submitted in support of the application for delayed birth certificates showed the same dates of birth as set forth in the affidavits and as recorded in the family Bible. It was shown that the baptismal records were false (R. 80, 81). However, it was not shown that the Petitioner had anything to do with certifying the baptismal records or had any knowledge of such records or of the certificate with reference thereto.

ASSIGNMENT OF ERRORS.

1. The Court below erred in affirming the judgment of the trial Court.

2. The Court below erred in not holding the evidence was wholly insufficient to support the verdict of the jury or the judgment of conviction entered thereon by the District Court.

SUMMARY OF ARGUMENT

I.

Facts and circumstances as consistent with innocence as with guilt are not sufficient proof of guilt, and will not support a verdict of guilty.

The facts and circumstances of this case are of such nature Petitioner's only connection with the transactions consisted of acts performed by him in his official capacity as a Notary Public; (a) the ministerial act of administering oaths to affiants, in affidavits setting forth the date of births of the Towns boys facts unknown to him except as represented by the statements of the mother and the boys and as shown by the Bible record; and (b) an act judicial in its nature, in certifying to the State authorities the result of his examination of the family Bible. His failure to discover any date in the publication of this Bible was so certified to the State authorities. It had no date of publication therein, although the date of the issuance of the license for publication did appear in a different place in very fine print. This the Petitioner testified he did not discover. He was not familiar with the Bible; the Towns family were practically strangers to him; he did not know the ages of the boys; he was not related to them; he received only the usual Notary fees and nothing occurred at the time to arouse his suspicion that a deception was being perpetrated by the Towns family. He did not form any definite opinion of the ages of the Towns boys until he had seen them subsequently, when he testified as a witness for the Government in prosecutions against the Towns boys; and his statement to the FBI agent with reference to their apparent ages was not made until after he had observed the Towns boys on this subsequent occasion, when their ages was a question involved in the prosecutions.

Even if the Petitioner had discovered and inserted the date of 1939 as the date of publication of the Bible, so far as the evidence shows, the State authorities would nevertheless have issued the delayed birth certificates to the Towns boys, since the

State only required that such documentary evidence should have been in existence for one year previously.

Petitioner's prior conviction of a different offense was not a circumstance of guilt of the second crime, the one having no logical connection with the other.

The conflict in testimony between the Petitioner and the F. B. I. agent was not of sufficient consequence to change the aspect of otherwise innocent acts. This conflict related to an oral statement made by Petitioner of his recollection of the apparent ages of the Towns boys when they first appeared before him in 1944. But the Petitioner explained that this statement was based upon his subsequent observation of the Towns boys, when he appeared as a Government witness in the prosecutions against them.

II.

Inference may not be piled upon inference to a degree not supported by proven circumstance or basic fact.

There was no direct proof of Petitioner's guilt. To find any basis for an inference of guilt it would be necessary to infer from Petitioner's statement to the F. B. I. agent, a statement made fifteen months afterwards, and after he had seen the boys on a second occasion, when their ages were facts involved in their prosecutions, that he not only became suspicious that a fraud was being attempted, but discovered the fraud and, instead of stopping or reporting it, joined in its commission, and that without any apparent motive or reason. Such a conclusion would require the basing of inference upon inference, or presumption upon presumption, to a degree not permitted.

III.

The acts of Petitioner in taking the affidavits, a ministerial duty, the performance of which was done for the benefit of the public, did not make him responsible for the contents of the affidavit.

The falsity of an affidavit raises no implication against the Notary. To the contrary, the presumption of law is that the Petitioner, as a public official, faithfully performed the official duty imposed upon him.

IV.

In certifying the result of his examination of the family Bible, Petitioner, as a Notary Public, was acting in a judicial capacity; and there is a presumption of law that such act was faithfully done in the performance of his official duty to the State and to the general public.

Such presumption was not overcome by merely showing that through oversight or negligence he had failed to discover and include in his certificate a date which was displaced and appeared in such fine print that it was difficult to read.

The presumption protecting an officer from civil or criminal liability in the performance of a judicial function is primarily designed to secure to the public a fearless administration of law. Sinister implications may not be cast upon judicial acts, merely by proof of an erroneous conclusion or the occurence of a natural oversight or ommission.

V.

Evidence of the prior conviction of Petitioner for another offense, involving moral turpitude—of issuing a false certificate to obtain money on a claim against the Veterans Administration—although admissible for the purpose of impeaching Petitioner as a witness, did not tend to prove that Petitioner was guilty of the crime charged in the case at bar, involving an attempt of the Towns family to prevent the registration of the Towns boys under the Selective Service Act. Such evidence is not admissible under the general rule, and does not come within any of the exceptions to this rule. The exceptions are carefully restricted for the reason that evidence of this nature is deemed to be highly prejudicial; and has the effect of deny-

ing the defendant the right to be tried in accordance with the rules provided by law. The court improperly instructed the jury to consider such other conviction for the purpose of determining guilty knowledge or guilty intent of the Petitioner with respect to the charge upon which he was being tried.

ARGUMENT

I.

Facts and circumstances as consistent with innocence as with guilt are not sufficient to form the basis of a presumption of guilt, or to support a verdict of guilt.

The facts and circumstances of this case are of this nature, for the following reasons:

(1) Petitioner had not previously known the Towns boys; and his only previous acquaintance with the mother was when he as a Notary Public took her acknowledgment to an affidavit on February 9th, 1944. ((R. 112-113)

(2) The official acts performed by Petitioner are presumed to have been done in good faith, in furtherance of his duty to the State and to the public, in one instance ministerial, the other judicial; and a mere oversight or erroneous conclusion on the part of such official creates no basis for an inference or presumption of criminal intent.

(3) Petitioner's duty, at the time, was not to ascertain and certify his judgment of the ages of the Towns boys, but specifically to examine the documentary evidence submitted to him, namely: The record in the family Bible, and to certify the dates of birth as recorded therein, the appearance of the Bible, and the date, if any, of its publication. This he did, and we believe the Court will agree with us that it was correctly done. It was technically correct. His failure to discover or certify the date of the issuance of a license to the publisher for the

publication of the Bible is a circumstance as consistent with innocence as with guilt, for the reasons that:

(a) The date of the issuance of the license was not the date of publication. The Bible was printed in Great Britain (R. 110) and no date of publication was shown.

(b) The date of the issuance of the license was in print so fine that it could not be easily read.

(c) He was not familiar with this Bible, never having seen it before.

(d) Nothing had then occurred to arouse his suspicion that the Bible record was false.

(4) Petitioner was not responsible for the truth of falsity of the statements contained in the affidavits.

(5) Petitioner's casual observation of the Towns boys at the time was not sufficient to create any suspicion on his part.

(6) It was not until he saw the Towns boys in Court months afterwards, when he appeared as a witness for the Government in the prosecution against them, that he formed any definite opinion of their ages. (R. 105, 114)

(7) Petitioner's statement to the FBI agent as to his idea or impression of the ages of the Towns boys, whether he said 18 or 15 years, cannot be twisted into a confession of guilt. (For further discussion of this incident, see pages 16-18 of brief.)

(8) None of the alleged co-conspirators testified to any conspiracy, or to any circumstance tending to connect Petitioner with any conspiracy, or tending to show any guilt on his part.

(9) The appearance of the Towns boys as witnesses in November 1945, one year and eight months after their appearance before Petitioner in March 1944, in view of the natural growth and development of the boys, could not have afforded reliable proof that Petitioner had any other concern with the matter than the performance of his official duties as a Notary Public. (R. 114)

(10) Evidence that Petitioner had previously been convicted of an offense involving moral turpitude (R. 117) was only relevant for the purpose of impeaching the Petitioner as a witness. It was not a similar offense admissible as an exception to the general rule of exclusion. (The Court's erroneous charge on this point is discussed on pages 21-23 of this brief.)

(11) Petitioner had been a Notary over 20 years. (R. 116) and was a veteran of World War I. (R. 105)

(12) It was shown that the Petitioner in his capacity as a Notary executed similar documents for as many as between 500 and 600 birth certificates in 1944, (R. 105) principally in connection with employment in defense plants, and he is not shown to have been informed that the Towns boys certificates were for any specific purpose.

These circumstances, when reduced to their natural and normal proportions, are found to be too flimsy to support a charge of guilt. Nor does their hue change from that of innocence to guilt when viewed in combination or sequence with other facts and circumstances relating to the Petitioner. His entire connection with the events is shown to have been limited to the execution before him of the affidavits and the execution by him of the certificate, all done in his capacity as an official of the State of Alabama.

There are only two circumstances in this case which we deem of sufficient consequent to merit discussion: (1) The ommission or error to insert the date of the license issued for publication of the family Bible; and (2) The statement of Petitioner to the FBI agent expressing his opinion or recollection of the apparent ages of the Towns boys.

Any possible probative force of the first of these circumstances as a proof of guilt was completely destroyed by proof that the date of publication was not shown, and that the date of the issuance of the license for publication appeared at an unusual place and in very fine print.

The statement to the FBI agent instead of being construed

as an admission of a guilty knowledge, when viewed in its proper light, is the mere expression of an opinion, or an attempt to recall or relate an impression of the ages of the Towns boys, gathered from their appearance. The fact that Petitioner had later seen the Towns boys at their trial, in which he appeared as a Government witness, was, as he related, used as a basis for forming and expressing his opinion of their apparent ages when they appeared before him to sign and swear to their affidavits, in March, 1944.

While it may be proper to weigh these two circumstances together, and not merely separately, we insist that the first circumstance, as a circumstance of guilt, was so thoroughly explained and therefore denuded of any sinister aspects, that it is not revived as a circumstance of guilt by a conflict in testimony relating to a statement made by Petitioner in an attempt to recollect or relate his impression of the ages of these boys, or to give the FBI agent an opinion thereon.

In this connection it is pertinent to consider what would have been his acts if he had been a co-conspirator. If he had discovered and inserted in his certificate the date of the issuance of the license as the date of the publication—1939—there is not one scintilla of evidence to show that the State authorities would not have readily issued the delayed birth certificates. To the contrary, the undisputed proof showed that the State only required documentary evidence as much as one year old. (R. 114). On the reverse side of Form VS-4, referred to by the witness, and which is a form published and issued by the Alabama State Board of Health—Board of Vital Statistics, it is stated:

> "Any two of the types of records listed below may be used to prove your date and place of birth provided they are *at least one year old and bear your name and contain the proof.*"

And this statement is reiterated therein in the following words:

"No document less than one year old will be accepted as proof."

(See Appendix "A" for a full copy of printed instructions appearing on the reverse side of said Form VS-4).

If the Petitioner had been a co-conspirator, his statement to the FBI agent would doubtlessly have been merely to the effect that he did not notice the boys sufficiently at the time to form any definite opinion of their ages.

The fact that he had seen them later and the fact that he was apparently in sympathy with their prosecution and the prosecution of other members of their family, and had no thought of his own guilt in connection with the transaction, doubtlessly accounted for the fact that he attempted to express a definite opinion or view as to their apparent ages when they first appeared before him. His statement was certainly not the kind of answer which one would expect to have been made by a co-conspirator to an FBI agent. Its very frankness, notwithstanding the conflict in evidence as to whether Petitioner on that occasion said they appeared to be over 15 or over 18 years of age, is more indicative of innocence than of guilt. Even though Petitioner stood impeached as a witness, his explanations of the original incident and the effect of his subsequent opportunity of forming an opinion as to the ages of these boys, so coincide with reason and the probabilities of innocence, that it is difficult to conceive of the conversion of these incidents into badges of guilt. And the F. B. I. agent had forgotten whether the point was covered by the written statement taken from Petitioner, and had to rely upon his memory. (R. 94)

In the case of *Tingle v. U. S.* (CCA 8) 38 Fed (2d) 573, 575, involving a charge of conspiracy, the Court held:

"When the circumstances relied upon are as consistent with innocence as with guilt, they are robbed of all probative value."

The rule that circumstantial evidence as consistent with innocence as with guilt will not support a conviction rests upon reason and authority. For a statement of the rule, see 16 Corpus Juris, pages 763, 764, (Sec. 1568).

On this point also see the following cases:

Cox v. United States, 96 F (2d) 41, 42, 43.

Langer v. United States, 76 F (2d) 817, 827.

Dahly v. United States, 50 F (2d) 37.

Gunning v. Cooley, 281 U. S. 90.

Sturns v. The White Clay City, 285 U. S. 195.

Stevenson v. Mutual Life Insurance Co. of New York, 87 F (2d) 441, 443.

New York Life Insurance Company v. King, 93 F (2d) 347, 353.

Spalitto v. United States, 39 F (2d) 939, 942.

Carson v. United States, 62 F (2d) 261, 274.

II.

Inference may not be piled upon inference to a degree not supported by proven circumstance or basic fact.

We do not believe that the Petitioner implied in his statement to the FBI agent, with reference to the apparent ages of the Towns boys, when they appeared before him as a Notary to sign and swear to their affidavits, that he had actually discovered their deception or had then concluded from their appearance that they were so far advanced in years that the dates of birth related by the mother and recorded in the family Bible were false.

Petitioner was not confronted with any charge. He apparently sympathized with the prosecution, after he had been informed that a deception had been practiced, and that upon him

as an official as well as upon the State and Federal governments, and after having observed the boys, at the time of their trial, with a definite view of determining what their ages would have been if the dates of their births as sworn to before him and as recorded in the Bible had been true.

His explanation of the entire occurrence coincides with the truth, the probabilities, and the normal and usual procedure of such an incident or event.

Therefore, the entire case for the prosecution is seen to hinge upon an accurate recolletion of Petitioner's statement to the FBI agent, its significance, and the inferences or presumptions which may be based thereon.

Before we can find any basis for an inference of guilt in the statement, we must conclude that Petitioner intended or meant by the statement not only that he had originally observed the Towns boys sufficiently to form a definite opinion of their ages as compared with what their ages would have been if the evidence of dates of birth submitted to him had been true; but that he did at that time form such an opinion; that from the difference or disparity which he then observed he not only should have become suspicious but did become suspicious and thereupon actually discovered that a deception was about to be practiced upon him, as the first public official encountered by the parties, and upon the State, and probably the Federal government; and, having, discovered the attempted deception, instead of stopping or reporting it, he then and there joined the criminals in a conspiracy to complete the deception and commit the criminal act which it involved, although he was not related to them and only received the regular Notary fees. This would involve piling inference upon inference, or presumption upon presumption to a degree not permitted.

That the statement was not an admission of guilt is clear, for no charge or intimation of guilt was confronting him when it was made. It had none of the elements of a confession of guilt. It did imply that after being informed of the deception practiced upon him, and after seeing the Towns boys upon the oc-

casion of their trial, the Petitioner upon reflection realized for the first time that the boys did appear to be older than their dates of birth as represented would have indicated, had he made the necessary computation or comparison when they appeared before him in March 1944, but which is refuted by the fact that he only saw them momentarily at that time, and had not previously known them.

But there is a vast difference between a subsequent realization, and admission, that there was something in the appearance of a deceiver which should have aroused, but for some reason did not arouse, one's suspicion, and an admission or confession by a person that he had discovered a deception and with guilty knowledge had aided in its consummation.

It is obvious that Petitioner's statement to the FBI agent was not intended as an admission of guilt, was not a confession of guilt, and was not an inadvertent admission of guilt.

The FBI agent at the time did not deem the remark of sufficient consequence to put it into the written statement he took for the Petitioner. He erred, on the trial, in first testifying that it was included in the written statement. It is therefore not unreasonable to doubt his positive attitude that the age stated was "18" instead of "15" as testified by Petitioner. Such a conflict in the testimony of the witnesses as to their recollection of this oral statement should not be accepted as reliable proof of the *corpus delicti*, the conspiracy, and to charge the aspect of every other incident and circumstance from that of innocence to guilt—and that to a degree *beyond a reasonable doubt*. We do not believe that the statement made by Petitioner to the FBI agent, even if removed from conflict, is sufficiently clear to overcome the presumption of innocence and the additional presumption of faithfulness attending an official in the performance of his duties to the public. (See *Dahly v. United States*, 50 F (2d) 37, *supra*.)

III.

Petitioner as a State Official, a Notary Public, in taking the

affidavits was not responsible for the truthfulness or falsity of their contents.

As a public official, a Notary Public, it was the duty of Petitioner to administer the oath to each affiant and to certify that he had done so. This he did. This was a ministeral duty, a duty which he owed to the public. The falsity of the contents of the affidavits, without more, is not a circumstance which lends support to any inference of guilt.

(See dissenting opinion by Waller, Circuit Judge, R. 141, 142)

To the contrary, there is a presumption of law that the acts of a public official were faithfully done in the performance of his official duty. (See *Dahly v. United States*, 50 F(2d) 237; *Dunlop v. United States*, 165 U. S. 486; and *Williams v. Weaver*, 100 U. S. 547.)

IV.

Petitioner, as a Notary Public, in certifying the result of his examination of the Family Bible was acting in a judicial capacity; and there is a presumption of law that his acts were faithfully done in the performance of his official duty.

It has been held that a Notary Public, in examining parties with reference to their execution of conveyances and other instruments, and in certifying to the facts of such acknowledgments, acts in a judicial capacity. (See *Orendorff v. Suit*, 52 So. 744; 167 Ala. 563, *Byrd v. Bailey*, 53 So. 773, 169, Ala. 452, and *Moore v. Bragg*, 103 So. 452, 212 Ala. 481.) Likewise, in examining the family Bible and in certifying to his findings with respect thereto, and the record of births appearing therein, the Petitioner, as a Notary Public, was acting in a judicial capacity, and is not liable civilly or criminally for an error, omission or mistake in certifying his findings, conclusions or judgment. (See *Williams v. Weaver*, 100 U. S. 547.)

It is a rule of law based upon reason and public policy. The

interest of the public demands this protection to public officials in the performance of their official duties. In fact, the primary purpose of the rule affording protection to public officers in the performance of their duties is designed to secure a fearless administration of the law. (See *Cooper v. O'Connor*, 105 F (2d) 761, and *Booth v. Fletcher*, 101 F. 667, certiorari denied, 307 U. S. 628.)

If the rules were otherwise, an officer of the law, particularly a Notary Public, would be deterred or hindered in the performance of his duties, which would seriously interfere with the demands of the public.

When applying the proper construction and presumption of law attending the execution of this official certificate by Petitioner, it is inconceivable that an error or omission therein should be construed as a circumstance of guilt, when it would not have supported a civil action for negligence.

In making this certificate, the official was not required or permitted to express any opinion as to the ages of the Towns boys. He was limited to certifying the result of his findings from an examination of the Bible and the record therein.

Furthermore, there is no proof, and it may not be assumed, that the birth certificates would not have been issued, as readily as they were issued, if the Petitioner had discovered and inserted in the certificate the year 1939, the date of the issuance of the license, as indicating the date of publication of the Bible. The published instructions on the State's Form VS-4 (Appendix page 25) expressly provide for the acceptance of documentary evidence as much as one year old. In other words, it affirmatively appears that the insertion of the year 1939 in the certificate would have met the State's requirements—and that more specifically than a certificate which did not show any date of publication. That the Bible had the appearance of such age when examined by Petitioner was not disputed. Also, it is common knowledge, and the State authorities apparently so recognize, that many families in subsequent years purchased

Bibles of various dates in which family history—births and deaths—are recorded. The rule and practice shown to have been adopted or promulgated by the State of Alabama did not require that the Bible should have been published before the date of the births of the persons whose records are recorded therein.

V.

Evidence of the prior conviction of Petitioner for a different offense, involving moral turpitude, although admissible for the purpose of impeaching Petitioner as a witness, did not tend to prove guilt in the case at bar.

Evidence of prior conviction for another offense was admissible for the purpose of impeaching the Petitioner as a witness. The prior offense involved a charge of falsely certifying as a Notary Public that a person who was actually deceased appeared before him to make a demand for payment of money by the United States or the Veterans Administration. (R. 139). However, such evidence was not a circumstance tending to prove the Petitioner guilty in the case involved; and the trial court erred in charging the jury to the effect that such prior conviction should be considered for "two purposes", and in referring to the second purpose the court said:

> "Another purpose it may show is what we call guilty knowledge—we call it in the law scienter, on the theory that the man who knows how to do a thing, may do it more quickly. You simply weigh that when you consider all this testimony, to determine whether or not it could apply to this particular defendant or any defendant, in your case it is this particular defendant." (R. 125).

The general rule excludes evidence of a conviction of another crime wholly independant of the crime for which defendant is on trial, even though it is a crime of the same court. (See 16 Corpus Juris, page 586, section 1132; 20 Am. Jur. page 293-

298, sections 313-316; and Jones on Evidence, section 243, *et seq.*)

The exceptions to the general rule are carefully restricted (16 Corpus Juris 587, 588, Section 1133; 20 Am. Jur. page 298, 316), since such evidence, if not clearly admissible, is highly prejudicial.

Cases in which it was first admitted were cases of uttering forged papers and other fraud (16 Corpus Juris 587, Annotation No. 1 (a)).

Other similar offenses may be shown when they tend to establish a common scheme or plan, to show guilty intent or guilty knowledge. But when criminal intent is inferred from the proof of an act, other like offenses will not be admitted (20 Am. Jur. page 295, 296). There must be a legal connection between the two crimes, so that one tends to prove the other (20 Am. Jur. page 298, Section 316).

Certainly, proof of a former conviction for obtaining money under false pretenses or making a false certificate to obtain money, does not tend to prove a subsequent charge that the Petitioner participated in a crime to prevent registration under the Selective Service Act. It was not shown that Petitioner received anything other than the regular Notary fees. His patriotism was not questioned. He was shown to have been a veteran of World War I.

Proof of a former crime under these circumstances did not tend to disprove a natural and normal oversight in failing to discover the displaced fine print of the date of the issuance of the licenses to publish the Bible, but was sufficiently prejudicial to produce an unwarranted conviction.

In the case of *Boyd v. United States*, 142 U. S. 450, 458, it was held that proof of a former crime, though of the same nature, "afforded no legal presumption or inference as to the particular crime charged", but tended to prejudice the defendants before the jury and to deny them "the full benefit of the rules pre-

scribed by law for the trial of human beings charged with crime".

Exceptions to the general rule are discussed in the following cases:

Wood v. United States, 16 Peters 342, 360;
Standard Oil Company v. United States, 221 U. S. 1, 76;
Heike v. United States, 227 U. S. 131, 145;
Niederluecke v. United States, 21 Fed (2d) 511, 513;
Marshall v. United States, 197 Fed 511, 515.

In *Niederluecke v. United States*, 21 Fed (2d) 511, 513, it was held:

"The rule is that such evidence (of another crime) should never be received unless it is clear the commission of the one offense tends by a clear and rational connection of the offenses to prove the commission of the other." (Citing authorities).
(See 8 R. C. L. page 206, where the rule is stated.)

If the prior offense was committed for money, it raises no presumption that the second offense was committed for money. The evidence is that he received nothing but his regular Notary fees. He was not related to the Towns family. They were practically strangers to him. To infer guilt from proof of the prior offense would require the basing of presumption upon presumption, which is not permitted. (*Niederluecke v. United States*, 21 Fed (2d) 511, 513. See also: *Wagner v. United States*, (CCA) 8 Fed (2d) 581, 586, and cases there cited.)

CONCLUSION

When consideration is given to the facts that members of the Towns famliy were practically strangers to the Petitioner, the Notary Public; that the only acts performed by him were required to be performed by him as a public official; that he owed these duties to the general public; that he received only the regular Notary fees; that the only act which he did which war-

ranted careful scrutiny involved a natural and normal oversight or ommission in a judicial certificate, which was explained; that even if the year 1939 had been inserted as the date of the publication of the Bible the State authorities, pursuant to rules adopted by them, would as readily have issued the delayed birth certificates; and that his opinion of the apparent ages of the Towns boys when they appeared before him in March 1944 was not formed until he had seen them again when he appeared as a Government witness in the prosecution against them; such facts and circumstances appear as cosistent with innocence as with guilt. When the proper rules of law and construction are applied to the facts and circumstances of this case, we believe that it will be clearly seen that the evidence is wholly insufficient to support the verdict of guilt. The verdict of guilt may only be explained by the prejudice engendered by instructions of the court to consider his former conviction of a distinct or different crime as sufficient proof of guilty participation in the criminal acts of others, probably aided by an excess degree of patriotism felt by the jurors at the time of the trial (November 1945) against any act involving disloyalty to our Country in time of war.

For these reasons we believe the verdict and judgment of guilt should be set aside and the cause reversed.

Respectfully submitted,

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APPENDIX

INSTRUCTIONS FOR RECORDING DELAYED BIRTH CERTIFICATES

1. Certified copies issued are pictures of the certificate that you prepare and which we keep as a permanent record. Writing must be clear and legible so that the photostatic pictures can be made. Make correct entries—*no change will be made on the delayed certificate after it is recorded in this office.*

2. After filling in the information about yourself and your parents, go before a notary public and sign the first affidavit. *This affidavit is to be made only by the person whose birth is to be recorded.* If you cannot write, have the notary public sign for you and you place your "X" mark over your name. When relatives are making out a record of birth for a person who is deceased or who is now in foreign service, this affidavit need not be made. Instead, write "Registrant not living" or "Not available—in foreign service" across the face of this affidavit.

3. Get someone who has *known you all of your life* to make the second affidavit before a notary public. This person may be either a relative or someone not related to you, but if they are living, one of your parents should make this affidavit. If the doctor or midwife who attended at your birth is living, he or she may make this affidavit if your parents are dead. *Whoever signs this affidavit must be older than you are and must state the reason he knows the statements about your birth to be true.*

4. For the certificate to be acceptable by all agencies asking for them and for all purposes, the certificate must show unquestionable proof of your birth date and birth place. *This proof is in addition to the two affidavits appearing on the other side of this form* which are referred to in paragraphs 2 and 3 above. *This additional proof cannot be affidavits, but must be obtained from at least two documents.* Any two of the types of records listed below may be used to prove your date and place

of birth provided they are *at least one year old and bear your name and contain the proof.* If certified copies, sworn statements about the original evidence or photostatic copies instead of the original record are submitted, the date the original record was made (or its approximate age) and the date that the copy or abstract was made and the location and custodian of the original document must be shown. The reviewing official (probate judge, custodian, etc.) can prepare this certification for you. Certified statements not bearing the seal of the custodian or reviewing official must be on the official stationery or letterhead of the organization or agency.

a. Physician's or hospital *record.*

b. Birth certificate of registrant's children.

c. Baptismal, cradle roll, or other church records.

d. Local, state or federal census records.

e. School record (entrance or census record).

f. *Insurance* policy or application or statement from the company.

g. Family Bible record (if authentic, old, inspected and certified by a probate judge, health officer or similar public official).

h. Employment or social security record.

i. Military discharge record.

j. Voting registration.

k. Marriage license *application.*

l. Any authentic record containinng required proof.

Remember—you are establishing your birth record and it is no stronger than your supporting evidence. You should furnish the best proof that you can assemble even though it may require additional time and effort. *Your certificate positively cannot be accepted for filing unless you submit at least two*

documents which individually or together give proof of birth date and birth place. This is according to Title 22, Section 39 of the 1940 Code of Alabama, as amended. *No document less than one year old will be accepted as proof.*

5. Do not mail any of the above mentioned items until you are able to send them all together in one envelope. These are:

a. The delayed certificate of birth, prepared as directed in paragraphs 1, 2 and 3 above.

b. Two or more pieces of the oldest documentary proof that you have as referred to in paragraph 4 above—this proof must be at least one year old.

c. A money order for fifty cents or more depending upon the number of copies wanted. Certified copies are issued only upon receipt of the statutory fee of fifty cents for each copy. Fee must be by *money order* made payable to the State Registrar of Vital Statistics.

d. Address mail to the Bureau of Vital Statistics, State Health Department, Montgomery 4, Alabama.

CAUTION—Be sure to write the name and address of the sender in the space provided on the certificate. This is important. Do not fill in any of the space on the certificate below the line that reads "(Do not write below this line)." Follow the above instructions.

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715944—46

In the Supreme Court of the United States

OCTOBER TERM, 1946

No. 457

C. J. ADAMS, ALIAS CHARLES ADAMS, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES

OPINION BELOW

The majority (R. 136–141) and dissenting (R. 141–142) opinions in the circuit court of appeals are not yet reported.

JURISDICTION

The judgment of the circuit court of appeals was entered July 9, 1946 (R. 143), and a petition for rehearing (R. 144–146) was denied August 5, 1946 (R. 147). The petition for a writ of certiorari was filed September 4, 1946. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act

of February 13, 1925. See also Rules 37 (b) (2) and 45 (a) of the Federal Rules of Criminal Procedure.

QUESTION PRESENTED

Whether the evidence is sufficient to sustain the conviction of petitioner for aiding and abetting designated persons knowingly to fail to register for the draft and for conspiring to do so.

STATUTE INVOLVED

Section 11 of the Selective Training and Service Act of 1940, 54 Stat. 885 (50 U. S. C. App. 311), provides in part as follows:

> Any person * * * who knowingly counsels, aids, or abets another to evade registration or service in the land or naval forces or any of the requirements of this Act * * * or any person or persons who shall * * * conspire to do so, shall, upon conviction in the district court of the United States having jurisdiction thereof, be punished by imprisonment for not more than five years or a fine of not more than $10,000, or by both such fine and imprisonment * * *.

STATEMENT

Petitioner was convicted (R. 32) in the District Court for the Southern District of Alabama on counts 2, 4, 6, and 7 of an indictment in seven counts (R. 2–17) charging violations of Section 11 of the Selective Training and Service Act.

Counts 2, 4, and 6 (R. 3–4, 6–7, 8–9) alleged that petitioner, Carrie Lee Towns, and Walter Towns knowingly counselled, aided, and abetted Samuel B. Towns, Samuel C. Towns, and John Towns, respectively, unlawfully to fail to register with their local draft board[1]; count 7 (R. 9–17) charged that the defendants and the Towns' boys conspired to commit the crimes described in the other counts of the indictment. Petitioner was sentenced generally to imprisonment for one year and a day and to pay a fine of $250 (R. 33).[2] Upon appeal to the Circuit Court of Appeals for the Fifth Circuit, the judgment was affirmed, one judge dissenting (R. 143).

The codefendants Carrie Lee Towns and Walter Towns are the parents of Samuel B. Towns and Samuel C. Towns, twin brothers who were born in 1923 (R. 54, 55, 56, 58, 62, 63, 74), and of John Towns, who is older than his twin brothers (R. 57). Notwithstanding the fact that in 1944 the boys were over eighteen years of age and had a duty to register for the draft, they failed to do so (R. 69). When the local draft board inquired into their failure to register, the mother, Carrie Lee Towns, informed the board that the boys were

[1] Counts 1, 3, and 5 were identical with counts 2, 4, and 6 except that a different draft board was alleged as the board with which the boys should have registered. These counts were dismissed upon motion of the Government at the close of the evidence (R. 118).

[2] Petitioner's codefendants previously had pleaded guilty to the indictment (see R. 121).

not yet of draft age, and in support of this assertion she furnished the board delayed birth certificates for the boys showing that the twins were born in 1930 and that John was born in 1928 (R. 70–74). This would have made the twins fourteen years old instead of twenty. The delayed birth certificates had been fraudulently obtained and the Government's theory was that petitioner participated in the frauds by which the mother obtained them. The evidence bearing on petitioner's part in the scheme may be summarized as follows:

Petitioner testified that he is a notary public (R. 108) and that he is thoroughly familiar with the procedure under Alabama law for obtaining birth certificates (R. 105–106, 108). He maintained a supply of forms used for that purpose (R. 107) and on a previous occasion in February 1944, he had acknowledged Carrie Lee Towns' signature on an application for a birth certificate for another child of the Towns (R. 112–113). On March 23, 1944, after a meeting with members of the draft board, Carrie Lee Towns came to petitioner's office and "said she wanted me to make out papers to get birth certificates for her children" (R. 111). She brought with her a Bible which purportedly contained entries going back to 1910 (R. 99), and showed false birth dates for the boys. Petitioner filled in the necessary forms and acknowledged the mother's signature on them. He explained

to her the necessity for supporting documents and on the following day she brought to him certificates of the custodian of the records of her church, which stated that those records showed that the three boys were under eighteen years of age.[3] The three boys came to petitioner's office on March 25 and signed the necessary forms and petitioner acknowledged their signatures. Petitioner also prepared substantially identical supporting certificates for each of the boys concerning the entries in the Bible. (R. 103–116.) The certificate for John Towns reads (see R. 138):

> I, C. J. Adams, a Notary Public in and for said state and county hereby certify that I have this day examined the Family Bible now in the possession of Carrie Lee Towns which was published by Collins Clear-Type Press in the year of year not shown and the facts below appear to have been recorded many years ago. The Bible shows John Towns to have been born at Pleasant Hill, Ala.; date of birth Oct. 9, 1928; name of father Walter Towns and name of mother Carrie Lee Towns.

On the basis of these documents the delayed birth certificates were obtained (R. 77).

It was developed at the trial that the bible, printed in England, was not an old family bible.

[3] The church official testified at the trial that the certificates were false and that he had signed them at the request of Carrie Lee Towns (R. 80–81).

For it was shown that although the bible contained no publication date, it contained, at the place where such a date might be found, a statement that the publisher was not licensed to print the book until March 10, 1939 (R. 99, 103). An F. B. I. agent testified that petitioner admitted to him that he filled in the various forms and acknowledged the signatures, and that petitioner said that when the three boys came to his office he could "tell they were over eighteen," but he nevertheless proceeded to complete the papers (R. 94–97). This testimony was confirmed by another witness (R. 97–98), although denied by petitioner. The appearance of the boys, in itself, was evidence for the jury to consider in determining whether petitioner believed they were fourteen years old, when in fact, they were over twenty.[4] It was also established that petitioner had previously pleaded guilty to an indict-

[4] The United States Attorney urged in the government's brief in the circuit court of appeals (p. 2) that the appearance of the boys was such that no one could reasonably mistake them to be as young as they pretended to be. He pointed out that one of the twins, who claimed to be only fourteen years old, "stood some six feet and weighed approximately two hundred pounds"; that the other twin, while smaller in stature, clearly revealed his age; and that the older brother, John, plainly appeared to be an adult. The twin brothers were witnesses at petitioner's trial (R. 87, 91), and the jury thus had an opportunity to observe whether petitioner might reasonably have failed to become aware of the fraud being perpetrated in respect of the true ages of the boys.

ment charging that he falsely certified, as a notary public, that a person who was actually deceased had appeared before him, which certificate was later forwarded to the Veterans' Administration (R. 117).

Petitioner denied that he had ever been apprised of the purpose for which the delayed birth certificates were to be used (R. 104, 115) and he testified that he told the F. B. I. agent that he said the boys looked to be over fifteen years of age, not eighteen (R. 105, 114).

DISCUSSION

Petitioner's sole contention (Pet. 6-7, 13-16) is that the evidence is insufficient to support the jury's verdict. We agree with petitioner that no evidence of criminality on his part is shown by the mere fact that he acknowledged the signatures of the various members of the Towns family on the forms and affidavits submitted to the Alabama authorities as a basis for securing the delayed birth certificates. For, as petitioner argues, a notary public does not certify to the truthfulness of representations made in documents which he acknowledges. We are unable to agree with the petitioner, however, that the evidence as a whole furnished no basis for the jury's verdict. If he did in fact know that the certificates were false and that they were to be used in violating the Selective Service Act he would have been

guilty of aiding and abetting a violation of the Act.

As we have shown in the statement, after Carrie Lee Towns brought the bible to petitioner, he executed a certificate for each of the three boys in which he stated, *inter alia,* that he had examined the bible and that the facts relating to the boys' birthdates "appear to have been recorded many years ago." There was evidence from which the jury could have concluded that this representation was false and that petitioner was aware of its falsity. It was undisputed at the trial that the bible was not published until some time after March 10, 1939, when the license was issued, and thus was less than five years old when petitioner examined it in March 1944. Petitioner denied that he had read the statement on the title page of the bible (R. 104) as to the date when the printing was licensed. But the licensing date was on the page where the publication date of a book is usually found. Hence, it was reasonable for the jury to conclude that in seeking to ascertain the publication date of the bible, as he was required to do when explicitly attesting that it was published in a "year not shown" and that the facts therein set forth "appeared to have been recorded many years ago" (see *supra,* p. 5), petitioner must have discovered that it could not have been printed before 1939 or did not make any effort to discover when it was printed. Coupled

with this is the fact that the three boys came to the petitioner's office on March 25, 1944, and he had an opportunity to observe for himself whether they appeared to be fourteen and sixteen years of age, respectively, as their mother had represented them to be, instead of over twenty. The corroborated testimony of an F. B. I. agent, which the jury was entitled to believe, was that petitioner admitted that when the boys came to his office he could tell that they were over eighteen years of age.

Clearly there was evidence to support the jury's verdict that petitioner was aware of the falsity of the representation as to the ages of the boys.

Petitioner denied at the trial (R. 115) that he knew the purpose for which the delayed birth certificates were being obtained. But, as the circuit court of appeals pointed out (R. 139):

> In the light of appellant's experience in having filled out over one thousand papers in connection with the Selective Service Act [see R. 106], the date given in the applications for delayed birth certificates would have informed him that the accompanying certificates executed by him would be used only for the single purpose of evading registration under the Selective Service Act.

At least in view of the known circumstances of the period with respect to the drafting of boys of 18 and over and his knowledge that an effort was being made to conceal the fact that the boys

were over 18, a jury could reasonably have inferred that petitioner knew that the false statements were to be used in violating the Selective Service Act. Considered in the light of the other evidence showing that it was petitioner who was familiar with and advised the Towns of the Alabama requirements for securing delayed birth certificates and that petitioner had pleaded guilty in another case to falsely certifying to the Veterans Administration that a person who was then deceased had appeared before him, the evidence to which we have alluded permitted the jury to conclude, we think, that at the very least petitioner was aware of the fraudulent scheme, that he knew that the entries in the bible were false, and that he falsely certified that the entries in the bible appeared to have been made "many years ago" with a view to assisting the Towns brothers to secure delayed birth certificates showing false ages and by this means to evade registration with their draft board.

If this Court concludes that the evidence in support of the jury's verdict is adequate, the case may be disposed of by a denial of the petition for a writ of certiorari. On the other hand, if the Court thinks the evidence is insufficient, it is respectfully suggested that, since the record is short and the narrow issue is purely factual, an appropriate disposition would be to grant the writ and reverse the judgment below without addi-

tional briefs or argument. Cf. *Oriolo* v. *United States*, 324 U. S. 824; *Womble* v. *United States*, 324 U. S. 830.

Respectfully submitted.

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In the Supreme Court of the United States

OCTOBER TERM, 1946

No. 457

C. J. ADAMS, ALIAS CHARLES ADAMS, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The majority (R. 108–113) and dissenting (R. 113–114) opinions in the circuit court of appeals are reported at 156 F. 2d 271.

JURISDICTION

The judgment of the circuit court of appeals was entered July 9, 1946 (R. 115), and a petition for rehearing was denied August 5, 1946 (R. 116). The petition for a writ of certiorari was filed September 4, 1946, and granted October 21, 1946 (R. 117). The jurisdiction of this Court is conferred by Section 240 (a) of the Judicial Code, as

amended by the Act of February 13, 1925. See also Rules 37 (b) (2) and 45 (a) of the Federal Rules of Criminal Procedure.

QUESTION PRESENTED

The principal question presented is whether the evidence is sufficient to sustain the conviction of petitioner for knowingly aiding and abetting designated persons to fail to register for the draft and for conspiring to do so.

STATUTE INVOLVED

Section 11 of the Selective Training and Service Act of 1940, 54 Stat. 885 (50 U. S. C. App. 311), provides in part as follows:

> Any person * * * who knowingly counsels, aids, or abets another to evade registration or service in the land or naval forces or any of the requirements of this Act * * * or any person or persons who shall * * * conspire to do so, shall, upon conviction in the district court of the United States having jurisdiction thereof, be punished by imprisonment for not more than five years or a fine of not more than $10,000, or by both such fine and imprisonment * * *.

STATEMENT

Petitioner was convicted (R. 24) in the District Court for the Southern District of Alabama on counts 2, 4, 6, and 7 of an indictment in seven counts (R. 1–13) charging violations of Section 11

of the Selective Training and Service Act. Counts 2, 4, and 6 (R. 2–3, 4–5, 6–7) alleged that petitioner and Carrie Lee Towns and Walter Towns knowingly counseled, aided, and abetted Samuel B. Towns, Samuel C. Towns, and John Towns, respectively, unlawfully to fail to register with their local draft board;[1] count 7 (R. 7–13) charged that the defendants and the Towns boys conspired to commit the crimes described in the other counts of the indictment. After trial before a jury, petitioner was sentenced generally to imprisonment for a year and a day and to pay a fine of $250 (R. 24–25).[2] Upon appeal to the Circuit Court of Appeals for the Fifth Circuit, the judgment was affirmed, one judge dissenting (R. 115).

The codefendants, Carrie Lee Towns and Walter Towns, are the parents of Samuel B. Towns and Samuel C. Towns, twin brothers, who were born in 1923 (R. 40, 41–42, 43, 47–48, 57), and of John Towns, who is older than his twin brothers (R. 43). Notwithstanding the fact that in 1944 the brothers were over 18 years of age and had a duty to register for the draft, they failed to do so (R. 52). When the local draft board inquired into their failure to register, the mother, Carrie

[1] Counts 1, 3, and 5 were identical with counts 2, 4, and 6, except that a different draft board was involved. These counts were dismissed on motion of the Government at the close of the evidence (R. 94).

[2] Petitioner's codefendants previously had pleaded guilty to the indictment (see R. 97).

Lee Towns, informed the board that they were not yet of draft age, and in support of this assertion she furnished the board delayed birth certificates purporting to show that the twins were born in 1930 and John in 1928 (R. 53–57). Thus the delayed birth certificates indicated that the twins were 14 years of age and John 16 when the certificates were obtained, instead of 20 and 22 as established by the evidence. The delayed birth certificates had been fraudulently obtained, and the Government's theory was that petitioner knowingly participated in the frauds.

The evidence bearing on petitioner's part in the scheme may be summarized as follows:

Petitioner testified that he is a notary public (R. 85). His testimony shows that he is thoroughly familiar with the procedure under Alabama law for obtaining delayed birth certificates R. 83–84, 86, 89, 91).[3] It was his practice to use official forms supplied by the Alabama Bureau of Vital Statistics or facsimilies which he would type as needed (R. 84–85). On a previous occasion in February 1944, he had acknowledged Carrie Lee Towns' signature on an application for a birth certificate for another child of the Towns (R. 89). On March 23, 1944, after a meeting with members of the draft board, Carrie Lee Towns came to petitioner's office and "said she wanted me to

[3] Petitioner testified that he "averaged beween five and six hundred [delayed] birth certificaates for the year 1944" (R. 83).

make out papers to get birth certificates for her children" (R. 54, 88). She brought with her a Bible (R. 82; Exhibit 15, R. 64)[4] which contained entries in pencil purportedly going back to 1910 (R. 77), and which showed false birth dates for her sons as detailed below. Petitioner, without inquiring whether any birth certificates were already on file,[5] immediately filled in an application form for each son and acknowledged the mother's signature on her affidavits on the forms (R 82, 88; Exhibits 4, 5, 6, R. 54).[6] He explained to her the necessity for supporting documents (R. 89), and on the following day she brought to him certificates of the custodian of the records of her church, which stated that those records showed that the three boys were under 18 years of age.[7] The three sons came to petitioner's office on March 25 and signed their affidavits on the forms, and petitioner acknowledged their signatures (R. 82, 88; Exhibits 4, 5, 6).

Petitioner prepared a supporting certificate,

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[4] Original exhibits 1–15, inclusive, are on file with the Clerk.

[5] Under Alabama law, delayed birth certificates could properly be obtained only if no prior recordation had been made (see App., *infra*, p. 27). It was established that the birth of the twins—under other given names—had been recorded on June 9, 1923 (Exs. 7–8, R. 57; Exs. 13–14, R. 60).

[6] The application forms (see Ex. 9, R. 59) consisted of one sheet and included form affidavits signed by the sons and the mother.

[7] The church official testified at the trial that the certificates were false and that he had signed them at the request of Carrie Lee Towns (R. 62).

dated March 24 (Exhibits 10, 11, 12, R. 59–60), for each of the boys concerning the entries in the Bible, as required by the state Bureau of Vital Statistics and substantially in the form prescribed by that bureau (R. 61, 84; see also Appendix, *infra*, p. 31, and Instruction 4g, p. 29). The certificate for John Towns is typical of the three and reads (Exhibit 12; see also R. 110):

> I, C. J. Adams, a Notary Public in and for said state and county hereby certify that I have this day examined the Family Bible now in the possession of Carrie Lee Towns which was published by Collins Clear-Type Press in the year of year not shown and the facts below appear to have been recorded many years ago. The Bible shows John Towns to have been born at Pleasant Hill, Ala.; date of birth Oct. 9, 1928; name of father Walter Towns and name of mother Carrie Lee Towns.

On the basis of these documents, the delayed birth certificates were obtained (R. 59).

It was developed at the trial that the Bible, printed in England, was not an old family Bible. For it was shown that although the Bible bore no publication date, it contained, at the place (on the fly leaf) where such a date would normally be found, a printed statement that the publisher was licensed to print the book on March 10, 1939 (R. 77–78, 81, 86–87; Exhibit 15). An F. B. I. agent testified that petitioner admitted to him that he filled in the various forms and acknowledged the

signatures, and that petitioner said that when the three boys came to his office he could "tell they were over eighteen," but he nevertheless proceeded to complete the papers (R. 73–76). This testimony was confirmed by another witness (R. 76–77), although denied by petitioner (R. 83, 91). It was also established that petitioner had previously pleaded guilty and served a sentence on an earlier charge in the district court below that he falsely certified, as a notary public, that a person who was actually deceased had appeared before him in connection with a claim for money, which certificate was later forwarded to the Veterans' Administration (R. 83, 93–94, 111).

Petitioner denied that he had ever been apprised of the purpose for which the delayed birth certificates were to be used (R. 81, 92). He testified, however, that he had "been helping the colored people since World War II with their selective service papers" and had "filled out more than 1,000 papers for selective service files" (R. 83). In addition, he testified that he told the F. B. I. agent that the boys looked to be over 15 years of age, not 18, and that he did not form this opinion until draft evasion proceedings were instituted against the boys (R. 83, 91).

SUMMARY OF ARGUMENT

I

The verdict is supported by the evidence. Petitioner, a notary public acting in a quasi-judicial

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capacity, certified that he had examined a family Bible and that the dates of birth appeared to have been recorded therein many years before. The certificates were made in support of applications for delayed birth certificates, and, under Alabama law, petitioner was required to use reasonable diligence to assure the accuracy of his examination and certification. Since personal observation of the applicants must have satisfied petitioner that they were older than they asserted and, in fact, were of draft age, and since the licensing date of the Bible showed that it was not printed until long after the dates of birth falsely recorded therein, the jury was entitled to conclude that petitioner was aware of the falsity of the applications in his certifications. This conclusion is supported by petitioner's admission to the F. B. I. and by his own testimony showing his wide experience in securing delayed birth certificates. The appearance of the applicants, the prevalence of the draft, petitioner's knowledge of and experience with selective service matters, and the implausibility of petitioner's explanation that for aught he knew the fraudulent birth certificates may have been desired for defense employment purposes, were all circumstances from which the jury was entitled to infer that petitioner knowingly assisted the Towns to obtain the certificates for the purpose of draft evasion.

The case was submitted to the jury under

proper instructions, including an instruction as to the necessity of finding that petitioner knew the certificates were intended to be used for draft evasion. This Court should affirm the conviction if there is substantial evidence, viewing the evidence most favorably to the Government, to support it. Petitioner's version of the events is inherently unbelievable and does not take account of the contradictory government evidence.

II

Petitioner's acts were not excused by reason of any presumption that official acts are faithfully performed or of an alleged immunity for omissions or mistakes in office. Such principles do not protect an official charged, as here, with wilful abuse of office by fraudulent participation in or aid of violations of federal criminal laws of general application.

III

No reversible error was involved in the trial judge's instructions permitting the jury to consider, on the issue of scienter, evidence of petitioner's prior conviction for fraud in connection with a Veterans' Administration matter. This evidence was material on the issue of petitioner's knowledge of the fraudulent character of the delayed birth certificates. In any event, petitioner has no standing to complain of the challenged instructions as improperly allowing the jury to con-

sider the prior conviction on the question of his knowledge of the draft evasion scheme. He took no exception to the instructions, and he did not raise any such question on appeal to the court below or in the petition for a writ of certiorari.

ARGUMENT

I

THERE IS SUBSTANTIAL EVIDENCE TO SUPPORT THE JURY'S VERDICT

Petitioner's principal contention is that the evidence is insufficient to support the verdict (Br. 11–21). In appraising this contention, it must be borne in mind that "It is not for [this Court] to weigh the evidence or to determine the credibility of witnesses. The verdict of a jury must be sustained if there is substantial evidence, taking the view most favorable to the Government, to support it." *Glasser* v. *United States,* 315 U. S. 60, 80. See also, e. g., *Mortensen* v. *United States,* 322 U. S. 369; *United States* v. *Socony Vacuum Oil Co.,* 310 U. S. 150; *Abrams* v. *United States,* 250 U. S. 616. Applying this test, we submit that petitioner's contention can not stand.

Petitioner was indicted for knowingly aiding and assisting the Towns boys to evade registration and service under the Selective Training and Service Act of 1940 and for conspiring with them

and their parents for that purpose.[8] Under the aiding and abetting charges, the Government, of course, was required to show (1) that petitioner did acts which aided or assisted the Towns boys in evading the draft, and (2) that his acts were done with guilty knowledge.

As shown in the Statement, *supra*, pp. 5–6, the affirmative acts upon which petitioner's conviction of aiding and abetting is predicated consisted of his preparation and execution of the delayed birth certificate papers which showed the Towns boys to be only 14 and 16 years of age in 1944, whereas in fact they were 20 and 22 years old at that time. Petitioner does not deny that the delayed birth certificates, issued on the basis of the supporting documents, falsely understated the ages of the Towns boys. He denies, however, that there is any evidence of culpability on his part in respect of the falsification. We do not, of course, contend that any responsibility attaches to petitioner merely because he notarized the affidavits. In thus authenticating the signatures

[8] While we think that the evidence established, at the least, a conspiracy between petitioner and the boys' mother (see *Direct Sales Company* v. *United States*, 319 U. S. 703), it is unnecessary to discuss the propriety of the verdict on the conspiracy charge, since, in our opinion, the record adequately supports petitioner's conviction on the substantive charges of aiding and abetting, and the general sentence is supportable by the conviction on the substantive counts alone. See *Pinkerton* v. *United States*, No. 719, O. T. 1945, decided June 10, 1946, slip opinion, footnote 1, p. 1.

of the mother and the sons, he did not, as a notary, vouch for the truth of the matters asserted in the affidavits. Nor do we raise any question as to a notary's duty where he knows that the contents of an affidavit, for which he executes an acknowledgement, are false. The prosecution here is not predicated on such conduct, but on certain affirmative acts of petitioner going beyond the normal functions of a notary in authenticating signatures under oath. As the evidence shows, petitioner, in addition to notarizing the Towns' affidavits, certified, in accordance with the provisions of Alabama law, that he had examined the family Bible, which was tendered to establish the dates of birth of the boys, and that the dates of birth entered in the Bible "appear to have been recorded many years ago." It is primarily upon that action, which petitioner says was judicial in nature (Br. 19), that his responsibility is predicated.

It is obvious from an examination of the statute and of the administrative regulations of the State of Alabama governing the issuance of delayed birth certificates (Ex. 9, R. 59; see also Appendix, *infra*), that the officer who examines and certifies as to the authenticity of documents submitted in support of an application for such a certificate performs far more than a ministerial function. It is his responsibility to make a thorough examination of such documents and to assure himself and the Bureau of Vital Statistics,

which thereafter issues the delayed birth certificate in reliance upon his examination and certification, that the evidence of age contained in the documents is satisfactory and convincing. Under the Alabama procedures, the Bureau of Vital Statistics has delegated the function of examining such supporting evidence to officers such as petitioner, and therefore they must exercise every reasonable precaution to assure that the evidence is reliable. Especially in view of the state procedures and petitioner's responsibilities in such matters, as shown by the evidence, including petitioner's own testimony, the jury, we submit, was warranted in inferring that petitioner deliberately falsified his supporting certificates. Thus, the record shows that the Towns boys were in petitioners' office before his certificates as to his examination of the family Bible were sent to the Bureau of Vital Statistics, and that, in consequence, he must then have realized that they were older than they pretended. Moreover, the twins were witnesses at the trial (R. 67, 71), and the jury was entitled to form an opinion, based on their appearance, as to the impression that they had made upon petitioner less than a year and a half before.*

*In the brief filed in the court below by the United States Attorney whose office conducted the prosecution, it was pointed out that at the time of the trial one of the twins was about six feet tall and weighed approximately 200 pounds, the other twin being slighter in stature. The other son, John, concededly was two years older than the twins.

Additionally, an F. B. I. agent who talked with petitioner before his trial and a state police official who was present at the time testified that petitioner admitted that when the Towns boys came to his office in connection with the delayed birth certificate, anyone could "tell they were over 18." While petitioner denied making this admission and testified that he did not form any opinion as to the boys' ages until he saw them at their trial for draft evasion (see also Br. 12, 16–18) and that at that later date he had formed the opinion that "they would be over 15," the jury was fully entitled to believe the officers' testimony, particularly in view of the corroboration afforded by the boys' appearance. Petitioner's testimony was self-contradictory and inherently unbelievable. He admitted that in the year he prepared the papers for the Towns boys he had prepared papers for over 500 birth certificates, and it is therefore hardly likely that he would have judged persons of the descriptions of the Towns boys to be about 15 years of age. It also seems unlikely, in view of his responsibilities in such matters (see pp. 12–13, *supra*), that he did not form any opinion as to their true ages at the time he prepared the papers for them.

Despite the appearance of the boys and his own opinion, as expressed to the officers, that they were "over 18," petitioner nevertheless certified that he had examined the family Bible and that

the "facts" shown therein as to the dates of the boys' births appeared to have been recorded many years ago. The Bible was introduced at the trial (Exhibit 15) and is part of the record here. An F. B. I. laboratory expert testified that on the page on which the publication date would normally appear there is a printed statement that the publisher was licensed to print the book on March 10, 1939 (R. 77–78, 81; see also petitioner's testimony, R. 86). This was a clear indication that the book could not have been printed prior to that date and, therefore, that the pencilled notations were not authentic recordations made at the time of the boys' births. The form provided by the Alabama Bureau of Vital Statistics for the certification of the examining officer (Appendix, *infra*, p. 31) required that petitioner state the year the Bible was published. In the space provided for such information, petitioner inserted the statement, "year not shown." While this statement may have been literally correct, the jury was entitled to infer that petitioner had examined the Bible for the purpose of ascertaining the date of publication and had noticed the licensing date of 1939, which must have preceded a publication date if there had been one and which was printed on the page where a publication date would normally appear. Accordingly, the jury was entitled to infer further, in the light of other evidence before it, that this

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statement, like his statement that the entries appeared to have been made many years ago, constituted a misrepresentation deliberately made to assist the Towns boys to secure delayed birth certificates falsely representing that they were under 18 years of age. This inference is fortified by petitioner's admitted familiarity with the applicable procedures. See, particularly, R. 89. Obviously, the Bureau of Vital Statistics, in determining whether to issue a delayed birth certificate, is not interested in the date of publication *per se*, but only in the bearing that that or like information has upon the genuineness of the recordations as to the age of the applicant (see, e. g., Appendix, *infra*, pp. 28–30, Instruction 4). Thus, a proper response to the question as to date of publication would require furnishing any information which would directly or circumstantially indicate when the document was printed. And the licensing date was vitally relevant to indicate the earliest time at which the Bible could have been printed.

To counter this evidence showing the fraudulent character of his certificates as to his examination of the family Bible, petitioner makes two arguments. At the trial he claimed that he was not able to find a publication date (R. 87), and he repeats here his assertion at the trial that the licensing date was in such fine print that he could not read it (Br. 12). Whether or not his testimony was credible was a question for the

jury. Aside from his demeanor in testifying, which may have influenced the jury, there were other factors which may have caused them to disbelieve him. For example, on cross-examination, at the request of government counsel to find the date of publication in the Bible, petitioner immediately turned to the fly leaf and read a few words from the paragraph containing the data concerning the publisher's license to print, but said that he was unable to read the whole paragraph because of the fineness of the print (R. 86–87). However, when he was shown Exhibit 14, which is a certified copy of the certificate of birth of Isham Towns,[10] and which, like the Bible, has been filed in this Court as part of the record, petitioner was able to read without any apparent difficulty the portion relating to the number of children in the Towns family, which is, certainly, in no larger or more readable print than the date of licensing appearing in the Bible (see R. 89–90). The jury was therefore justified in concluding that petitioner's claimed inability to find or read the licensing date in the Bible was merely feigned.

Petitioner's second argument is that there is no proof that if he had inserted the licensing date in his certificates the Bureau of Vital Statistics would not have issued the delayed birth

[10] One of the twins was originally named Isham and the other Isaac (see fn. 5, p. 5, *supra*).

certificates, and that it must be assumed the Bureau would have issued the certificates because its rules do not require documents furnished in support of an application to be more than one year old (Br. p. 14). This argument is without merit. While the instructions issued by the Bureau state that the documentary evidence must be "at least one year old," that provision is obviously one of general limitation applying particularly to documents of recent origin, such as voting registrations and marriage licenses, rather than to old documents in which births are normally recorded about the time they occur. This interpretation is fortified by the specific instruction dealing with family Bibles, which provides that they may be used "if authentic, old, inspected and certified by" a specified official (see Appendix, *infra*, p. 29). Furthermore, the instructions and the state statute with respect to delayed birth certificates as a whole show that the ultimate fact to be proved is the age of the applicant and that all of the evidence must support the age asserted by him (see, e. g., the first and last paragraphs of Instruction 4, Appendix, *infra*, pp. 28–29, 30). Under these circumstances, petitioner must have realized that pencilled entries purporting to show ages of members of the family substantially in excess of the age of the Bible were not persuasive evidence of their ages and that, at the least, the Bureau of Vital Statistics should have had all of the available evidence before it, including the licensing date of the

Bible, in order to determine whether to issue the delayed birth certificates. While it cannot be said with certainty that the delayed birth certificates would not have been issued if petitioner had furnished the licensing date of the Bible in his certifications, there can be no question that the omission of that date materially enhanced the possibility that false delayed birth certificates would be issued.

The evidence, as a whole, therefore, clearly shows that petitioner knowingly aided and assisted in obtaining false delayed birth certificates for the Towns boys. It was these certificates which were the keystone of the draft evasion scheme.

The question remaining, therefore, is whether there was proof that petitioner knew that the delayed birth certificates were being secured for the purpose of aiding the Towns boys to evade the draft. In appraising the sufficiency of the evidence in this connection, it should be noted at the outset that when Mrs. Towns first went to petitioner to obtain the certificates for her sons, he immediately proceeded to prepare the necessary papers without making any effort to ascertain whether the births had previously been recorded,[11] although under the state law, such a

[11] In view of petitioner's prior conviction of complicity in making a fraudulent claim on the Veterans' Administration by certifying as a notary that a person actually deceased had appeared before him (see pp. 24–25, *infra*), his readiness to assist in procuring fraudulent birth certificates for the Towns boys takes on added significance.

certificate could not be obtained if the birth was already registered.[12] But more directly, petitioner admitted a thorough familiarity with the preparation of papers in selective service matters; he testified that he had "filled out more than 1,000 papers for selective service files" (R. 83). It may be judicially noticed that in 1944, at the height of the war, the draft was in full operation. At that time, even a person less informed in such matters than petitioner was well aware that men who appeared to be adults were imminently subject to the draft. He nevertheless aided the Towns boys, who manifestly were of draft age, to obtain false birth certificates showing them to be only 14 and 16 years of age. Petitioner undoubtedly realized the Towns had an ulterior motive in seeking certificates showing the boys to be far younger than they actually were, and his familiarity with the Selective Service System, his awareness of the draft and his observation of the boys must have made him realize—if he was not expressly advised—that the false certificates were to be used in a draft evasion scheme.

At the trial petitioner attempted to impress the jury with the idea that as far as he knew the birth certificates might have been desired for defense employment purposes (see R. 84; see also Br. 13). Apparently the jury chose not to believe this ex-

[12] The birth of the twins had been recorded in Alabama in 1923 (see footnotes 5 and 10, *supra*, pp. 5, 17). While that recordation was under other given names, Isaac and Isham, that fact is not relevant, because petitioner made no effort to ascertain the information.

planation. If for no other reason, the explanation appears unlikely because young men seeking employment would not be apt to substantially understate their ages. It does not avail petitioner to argue now (see Br. p. 13) that he was not shown to have been informed of the purpose for which the certificates were obtained. There were sufficient circumstances from which the jury was entitled to conclude that he must have known the use for which the certificates was intended.

Contrary to the implication of petitioner's argument, it is not for an appellate court to resolve conflicts in the testimony, or to determine the credibility of witnesses, or to weigh the evidence, but only to decide whether there is substantial evidence, taking the view most favorable to the Government, to support the jury's verdict. *Glasser* v. *United States,* 315 U. S. 60, 80. See also *Anderson* v. *United States,* 318 U. S. 350, 351, fn. 1. The question whether, in fact, petitioner had the requisite guilty knowledge was one for the jury, and the jury resolved that issue against him under full and fair instructions to which he took no exception (see R. 104). Thus, the trial judge admonished the jury (R. 97–98):

> * * * A man cannot be guilty unless he knew it was wrong. A man may do wrong, but, unless it is in his heart to do wrong, unless it had been in his heart and he knows what he is doing to effect a purpose agreed upon tacitly or otherwise, that man would not be guilty. Now, the ques-

tion here is did this defendant—and practically the only question in this case is did this defendant help to do something, knowing that something was wrong, do the facts and circumstances show or point to him as one who was aiding to put over the thought that those boys would not go into the service. As a matter of fact, they didn't go, and the undisputed testimony here is they were subject to the draft law. That may be true and their parents may be guilty, but you must go further and believe that this man knew those certificates were wanted, knew the purpose for which those certificates were wanted, that he knew something about why they were asking for them, that he became a party to it and aided them in violating the law. Now, did that happen? You must be convinced beyond a reasonable doubt that it did happen before you can convict him under those counts which set out that he aided and abetted in having so and so fail to report on such a date. Is there any evidence here to connect him with any aiding and abetting. The same applies to the conspiracy. * * *

The factors listed by petitioner (Br. 11–13) in support of his argument for reversal are predicated on his interpretation of the evidence in the light most favorable to him, and ignores evidence and inferences favorable to the Government, which convincingly contradict petitioner's exculpatory testimony. Moreover, his argument is

based on acceptance of his own testimony and overlooks the fact that the jury was entitled to disbelieve him, as it had reason to do, in view of the lack of plausibility of his testimony. In short, petitioner's review of the evidence before this Court would establish a new and unique test of appellate review contrary to established doctrine.

II

PETITIONER'S CONDUCT IS NOT EXCUSED BY REASON OF HIS OFFICIAL POSITION

Petitioner argues that since, in filling out the certificates as to his examination of the Bible, he was acting in a judicial capacity, there is a presumption of law that his acts were faithfully done in the performance of his duties, and that, as a public official, he is not liable civilly or criminally for an error, omission or mistake in the certifications (Br. 19–20).[13] This argument is unavailing. The Government's case is not predicated on charges of error, negligence, or mistake, but upon fraudulent and wilful abuse of office to aid and assist evasion of the draft. It is obvious that any presumption as to the propriety of an official's conduct or any immunity for mistakes in judgment does not extend to wilful, fraudulent, or criminal abuse of office,

[13] It should be noted in this connection that petitioner made no request at the trial for instructions concerning such a presumption or immunity (see R. 28–33). His defense was simply that he acted in good faith.

See, e. g., *Peonage Cases*, 123 Fed. 671, 684 (M. D. Ala.); *Bevard* v. *Hoffman*, 18 Md. 479, 484; *State* v. *Powers*, 75 N. C. 281, 284; *State* v. *Glasgow*, 1 N. C. 176, 187; *Price* v. *Commonwealth*, 132 Va. 582, 587–588; *United States* v. *Gonzaga*, 3 Philippines 135. And it has always been the law that a public official is subject to the general criminal laws of the community, whether his transgression is within or without the functions of office. See *Palmer* v. *D. C.*, 26 App. D. C. 31, 33–34; *State* v. *McLean*, 121 N. C. 589, 599–600. The evidence here shows a wilful abuse of office in aiding a violation of federal law, responsibility for which cannot be avoided by refuge under a cloak of authority.

III

NO REVERSIBLE ERROR IS INVOLVED IN THE TRIAL COURT'S INSTRUCTION PERMITTING THE JURY TO CONSIDER PETITIONER'S PRIOR CONVICTION ON THE ISSUE OF SCIENTER

Petitioner urges that it was error for the trial court to permit the jury to consider evidence of his prior conviction for another offense for any purpose other than its bearing on his credibility (Br. 21–23).

On his direct examination, petitioner testified, "I was convicted once in this Court and served time" (R. 83). Thereafter, without objection by the defense, the Government introduced the record of the conviction to which petitioner had referred, showing that he had been convicted of falsely certifying as a notary public that a per-

son who was actually deceased appeared before him to make a demand for payment of money by the Veterans' Administration (R. 93–94, 111). The trial judge instructed the jury that they could consider this evidence "for two purposes—it goes to his credibility as a witness, because it is a crime involving moral turpitude. The rule is that a man who is shown to have committed a crime involving moral turpitude—you may consider the evidence to that effect in weighing his testimony and determining his credibility, the theory being that a man who commits a felonious crime will more quickly lie than one who has not. Another purpose it may show is what we call guilty knowledge—we call it in the law scienter, on the theory that the man who knows how to do a thing, may do it more quickly. You simply weigh that when you consider all this testimony, to determine whether or not it could apply to this particular defendant or any defendant, in your case it is this particular defendant" (R. 100–101).

We submit that, as the trial judge indicated, the evidence of the prior conviction was relevant, aside from its relation to credibility, because it showed a predisposition on petitioner's part to further fraudulent schemes by abuse of his office, and hence was a pertinent factor for the jury to consider on the issue whether petitioner knew that the birth certificates were false. But even if, as petitioner argues, the instruction is sus-

ceptible of being interpreted as improperly allowing the jury also to consider the prior conviction on the question of petitioner's knowledge of the Towns' purpose in securing the birth certificates,[14] he is in no position to complain. In response to the court's inquiry at the close of the instructions whether defense counsel had any exception, the reply was in the negative (R. 104). Petitioner did not raise the point in the court below (see R. 34–35, 109), and in this Court it is not mentioned in his petition for a writ of certiorari. Rule 38 of this Court provides that "only questions specifically brought forward by the petition for writ of certiorari will be considered." See *General Pictures Co.* v. *Electric Co.*, 304 U. S. 175, 177–178; *National Licorice Co.* v. *Labor Board*, 309 U. S. 350, 357.

CONCLUSION

For the reasons indicated, it is respectfully submitted that the judgments below should be affirmed.

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FEBRUARY 1947.

[14] But cf. the instruction quoted at pp. 21–22, *supra*.

APPENDIX

Title 22, § 39, of the Code of Alabama (1940) Cumulative Pocket Part 1945, provides, in part, as follows:

> *Filing of delayed certificate of birth.*— Any person born in the State of Alabama whose birth has not been registered may have his or her birth recorded by the state registrar of vital statistics after complying with the requirements set forth below. * * * 3. For an individual who has passed his twelfth birthday a "delayed certificate of birth" form prepared by the state board of health shall be completed and sworn to by the person whose birth is being registered and one other person thoroughly acquainted with the facts. In addition to the above, the applicant shall furnish as a minimum two records or pieces of documentary evidence bearing his name and which support at least the statements made as to his age and county of birth. 4. The state registrar is authorized to accept what he considers authentic proof of the facts connected with the age, parentage, and place of birth of the individual concerned. Evidence submitted in support of a delayed birth certificate must be retained, and filed in permanent files with the state registrar. * * *

The "Instructions For Recording Delayed Birth Certificates" furnished with application

forms provided by the Alabama Bureau of Vital Statistics provide, as follows:

1. Certified copies issued are pictures of the certificate that you prepare and which we keep as a permanent record. Writing must be clear and legible so that the photostatic pictures can be made. Make correct entries—*no change will be made on the delayed certificate after it is recorded in this office.*

2. After filling in the information about yourself and your parents, go before a notary public and sign the first affidavit. *This affidavit is to be made only by the person whose birth is to be recorded.* If you cannot write, have the notary public sign for you and you place your "X" mark over your name. When relatives are making out a record of birth for a person who is deceased or who is now in foreign service, this affidavit need not be made. Instead, write "Registrant not living" or "Not available—in foreign service" across the face of this affidavit.

3. Get someone who has *known you all of your life* to make the second affidavit before a notary public. This person may be either a relative or someone not related to you, but if they are living, one of your parents should make this affidavit. If the doctor or midwife who attended at your birth is living, he or she may make this affidavit if your parents are dead. *Whoever signs this affidavit must be older than you are and must state the reason he knows the statements about your birth to be true.*

4. For the certificate to be acceptable by all agencies asking for them and for all purposes, the certificate must show unques-

tionable proof of your birth date and birth place. *This proof is in addition to the two affidavits appearing on the other side of this form* which are referred to in paragraphs 2 and 3 above. *This additional proof cannot be affidavits, but must be obtained from at least two documents.* Any two of the types of records listed below may be used to prove your date and place of birth provided they are *at least one year old and bear your name and contain the proof.* If certified copies, sworn statements about the original evidence or photostatic copies instead of the original record are submitted, the date the original record was made (or its approximate age) and the date the copy or abstract was made and the location and custodian of the original document must be shown. The reviewing official (probate judge, custodian, etc.) can prepare this certification for you. Certified statements not bearing the seal of the custodian or reviewing official must be on the official stationery or letterhead of the organization or agency.

a. Physician's or hospital *record.*

b. Birth certificate of registrant's children.

c. Baptismal, cradle roll, or other church records.

d. Local, state or federal census records.

e. School record (entrance or census record).

f. *Insurance* policy or application or statement from the company.

g. Family Bible record (if authentic, old, inspected and certified by a probate judge, health officer or similar public official).

h. Employment record.

i. Military discharge record.

j. Voting registration.

k. Certified copy of marriage license application.

l. Any authentic record containing required proof.

Remember—you are establishing your birth record and it is no stronger than your supporting evidence. You should furnish the best proof that you can assemble even though it may require additional time and effort. *Your certificate positively cannot be accepted for filing unless you submit at least two documents which individually or together give proof of birth date and birth place.* This is according to Title 22, Section 39 of the 1940 Code of Alabama, as amended. *No document less than one year old will be accepted as proof.*

5. Do not mail any of the above mentioned items until you are able to send them all together in one envelope.

These are:

a. The delayed certificate of birth, prepared as directed in paragraphs 1, 2 and 3 above.

b. Two or more pieces of the oldest documentary proof that you have as referred to in paragraph 4 above—this proof must be at least one year old.

c. A money order for fifty cents or more depending upon the number of copies wanted. Certified copies are issued only upon receipt of the statutory fee of fifty cents for each copy. Fee must be by *money order* made payable to the State Registrar of Vital Statistics.

d. Address mail to the Bureau of Vital Statistics, State Department of Health, Montgomery 4, Alabama.

CAUTION—Be sure to write the name and address of the sender in the space provided on the certificate. This is important. Do not fill in any of the space on the certificate below the line that reads "(Do not write below this line)." Follow the above instructions.

The form provided by the Alabama Bureau of Vital Statistics for certification of inspection and examination of a family Bible submitted as evidence in support of an application for a delayed birth certificate is as follows:

BIBLE RECORD

STATE OF
COUNTY OF

I, _____, a Notary Public in and for said State and County, hereby certify that I have examined the family Bible now in the possession of _____ _____ which was published by _____ in the year of ____ and that from the appearance of the Bible, the facts stated below were recorded many years ago. The Bible shows _____ to have been born at _____, date of birth _____, name of father _____ and maiden name of mother _____

Signature_____
(Seal) Date_____

VS–180

U. S. GOVERNMENT PRINTING OFFICE: 1947

No. 457. ADAMS *v.* UNITED STATES. Certiorari, 329 U. S. 702, to the Circuit Court of Appeals for the Fifth Circuit. Argued February 14, 1947. Decided March 3, 1947. *Per Curiam:* The judgment is affirmed. *Thomas G. Gayle* argued the cause for petitioner. With him on the brief was *John W. Lapsley*. *Sheldon E. Bernstein* argued the cause for the United States. With him on the brief were *Acting Solicitor General Washington* and *Robert S. Erdahl*. Reported below: 156 F. 2d 271.